TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1930

No. 195

COLUMBUS & GREENVILLE RAILWAY COMPANY ET AL., APPELLANTS AND PETITIONERS,

vs.

W. J. MILLER, STATE TAX COLLECTOR, FOR THE USE OF THE MISSISSIPPI LEVEE DISTRICT

APPEAL FROM AND ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MISSISSIPPI

APPEAL FILED JUNE 10, 1930

PETITION FOR CERTIORARI FILED JULY 17, 1930

CERTIORARI GRANTED OCTOBER 20, 1930

(35,117)

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APPEAL FROM THE SUPREME COURT OF THE STATE OF MISSISSIPPI

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[fols. 1 & 2] [Captions omitted]

[fol. 3]

IN CIRCUIT COURT OF MONTGOMERY COUNTY

No. 2047

W. J. Miller, State Tax Collector, for the Use of Mississippi Levee District

vs.

Columbus & Greenville Railroad Company

Declaration—Filed July 31, 1928

Now comes the plaintiff, W. J. Miller, the duly elected, qualified and acting State Tax Collector of the State of Mississippi, who sues for and on behalf of the Mississippi Levee District and subdivision of the State of Mississippi, organized and existing under the laws of the State of Mississippi, and domiciled at Greenville, Mississippi, and complains of the defendant herein, Columbus & Greenville Railroad Company, a corporation incorporated under the laws of the State of Mississippi, and having a line of Railroad running through the said County and State, and having offices and agents thereon, upon whom personal service of process may he had, and for his cause of action states as follows:

1

That the plaintiff herein, W. J. Miller, State Tax Collector, is the duly elected, qualified and acting State Tax Collector of the State of Mississippi, authorized by law to sue for and recover any monies due the State of Mississippi, or any Levee District thereof, or any taxes or back taxes that may be due said Levee District of the State and he brings this suit for and on behalf of the Mississippi Levee District, incorporated under the laws of the State of Mississippi, and composed of the counties of Bolivar, Washington, Issaquena, Sharkey, and parts of Warren and Humphreys Counties.

[fol. 4] 2

That the defendant herein, the Columbus & Greenville Railroad Company, is a railroad corporation, incorporated and existing under the laws of the State of Mississippi, since January 1st, 1926, down to the present time and owning or operating a line of railroad extending from Greenville, Washington County, Mississippi, to Columbus, Lowndes County, Mississippi.

3

That under Chapter 262 of the Laws of 1914, a tax of three hundred and fifty dollars ($350.00) a mile is imposed on every main or trunk line of railroad running through the said Mississippi Levee District, for the use of said Levee District in the protection of the said property from overflow from the Mississippi River.

4

That the said defendant company during the years 1926 and 1927 was then and there seized and possessed of, and owned and operated a trunk or mainline of railroad extending for a distance of eighteen and forty-one hundredths (18.41) miles from the City of Greenville to Sunflower County, within the said Mississippi Levee District and became and were thereby subject to the payment of said tax of three hundred and fifty dollars ($350.00) per mile, and that said taxes accrued on September 1st, 1926 and on September 1st, 1927.

That on September 1st, 1926, the said defendant company owed the said Levee District as follows:

18.41 of main line at $350.00 per mile	$6,443.50
Said railroad only paid of said amount in October, 1926, the sum of	920.50
Leaving a balance due said Levee District of	$5,520.00
10 per cent damages thereon for the said year 1926	552.30

[fol. 5] That for the year 1927 defendant company became liable for and only paid taxes as listed below Eighteen and

Forty-one Hundredths (18.41) miles of main or trunk line at Three Hundred and Fifty Dollars ($350.00) per mile due in September, 1927, $6,443.50; that said railroad paid of said amount in October, 1927, the sum of $920.50, leaving a balance due said Levee District of $5,523.00; that Ten per cent (10) pct. damages thereon for the year 1927 amounts to $552.30 making a total amount due said Levee District for the said years 1926 and 1927 and unpaid of $13,150.60.

5

Plaintiff would further show that the Legislature of the State of Mississippi attempted to enact Chapter 259 of the Laws of 1926 attempting and proposing to amend Chapter 282 of the laws of 1914 so as to provide by said amendment that the tax of Three Hundred and Fifty Dollars ($350.00) per mile on all main and trunk lines should be reduced to Fifty Dollars ($50.00) per mile on all main lines of railroad running through said Levee District, having less than Twenty-five miles of main line in said District; that said defendant company attempted to pay said taxes imposed by law under this said Chapter 259 of the laws of 1926. Plaintiff would show that said Chapter 259 of the laws of 1926 is and was unconstitutional, inoperative, null and void, for the reason that the same was passed in utter violation of Section 234 of the Constitution of the State of Mississippi, in that the said Section 234 of the State Constitution requires that no bills changing or affecting the taxation or revenue of the Mississippi Levee District shall be considered or passed by the State Legislature without the said proposed bill having been published in the County of the domicile of said Levee District for four weeks prior to its introduction in said Legislature.

[fol. 6] Plaintiff charges, alleges and avers that said Chapter 259 of the Laws of 1926 was not published in a newspaper in the County in which is situated the domicile of the Board of Levee Commissioners of the said Mississippi Levee District to be affected thereby for four weeks prior to the introduction thereof in the Legislature; and that said bill was not published at any time in said County of the domicile of the said Mississippi Levee District and that in the passage of said act, attempting to amend Chapter 282 of the Laws of 1914 the said Legislature acted in total disregard and viola-

tion of the mandate of Section 234 of the said Constitution and that said Chapter 259 of the Laws of 1926 having been passed in violation of said Constitution was and is inoperative, null and void, and that the said defendant railroad company became, was and is liable for the full amount of said taxes of Three Hundred and Fifty Dollars ($350.00) per mile for the Eighteen and Forty-one Hundredths (18.41) miles of main and trunk line running through said Levee District, less the payments thereof of Fifty Dollars ($50.00) per mile for each of said years; that by reason of the foregoing the said defendant then and there became, was and is indebted to the Mississippi Levee District in the sum of Eleven Thousand and Forty-six Dollars ($11,046.00), together with the Ten per cent (10 pct.) damages allowed thereon by law for the said years 1926 and 1927, and for interest thereon from the dates thereof to the time of recovery herein of Six per cent (6 pct.) per annum on said amount.

Wherefore plaintiff brings this suit for and on behalf of the said Mississippi Levee District for the use of the Mississippi Levee Board and demands judgment against the said defendant railroad company in the full sum of Twelve Thousand One hundred and fifty and 60/100 Dollars ($12,-[fol. 7] 150.60), together — interest thereon and all costs of this suit.

Franklin, Easterling & Fox, Attorney- for Plaintiff.

[File endorsement omitted.]

IN CIRCUIT COURT OF MONTGOMERY COUNTY

[Title omitted]

DEFENDANT'S PLEAS

Comes the Columbus & Greenville Railway Company, by its attorneys and for a plea to the plaintiff's declaration exhibited against it in the above-entitled cause, says that it is not indebted to the plaintiff in the manner and form alleged in the plaintiff's declaration, and to this, it puts itself upon the country.

Vernon Rowe, Gardner, Odom & Gardner, Attorneys for Defendant.

[fol. 8] IN CIRCUIT COURT OF MONTGOMERY COUNTY

NOTICE TO PLAINTIFF—Filed Oct. 12, 1929

To the plaintiff and/or his attorneys of record:

You will take notice that at the trial of the above entitled cause the defendant will show that it operates less than twenty-five (25) miles of railroad in the Mississippi Levee District, and has heretofore paid, as required by law, the full tax imposed on it under Section 259, Mississippi Laws of 1926, which law affords and provides for a reasonable legislative classification of railroad in the Mississippi Levee District for taxation purposes, and is entirely consistent with and valid under the Fourteenth Amendment to the Constitution of the United States. The said defendant having discharged its liabilities to said Mississippi Levee District under said act, now sets up, alleges and avers that it has acquired, and now has, under the Fourteenth Amendment to the Constitution of the United States, the right, privilege and immunity from further liability for taxes to the said Mississippi Levee District.

And the defendant will further show that the statue levying the mileage tax demanded by plaintiff in this suit, i. e. Chapter 7 of the Laws of Mississippi of 1886, as amended by Chapter 282 of the Laws of 1914 and Chapter 259 of the Laws of Mississippi of 1926, is arbitrary, unreasonable and in violation of the due process and equal protection clauses of the Fourteenth Amendment to the United States Constitution, and that said statute is also unconstitutional and void and a burden on interstate commerce; in violation of Clause 3, Section 8, Article 1 of the United States Constitution, and in support of said contention defendant will introduce evidence to show that defendant's property is not benefited by the levees of the Mississippi Levee District any more than other property in said district, in proportion to value; that railroad property in general is not benefited [fol. 9] more than other property in said district in proportion to value; that during the year 1926 defendant had railroad property in said Mississippi Levee District consisting of 18.41 miles of main track which has been duly valued and assessed by the Mississippi State Tax Commis-

sion for said year at the sum of $18,410.00; that the tax on said property for the year 1926 at the rate levied by the Mississippi Levee District, to-wit, four (4) mills on the dollar, would have been $73.64 which is approximately $3.90 per mile; that the amount of tax which defendant has already paid to said Levee District for levee purposes for the year 1926 at the rate of $50.00 per mile is $920.50; that the tax as claimed by plaintiff on the basis of $350.00 per mile would be $6,433.50. Defendant will further show that its property in said district, consisting of 18.41 miles of main track, has been duly valued and assessed by the Mississippi State Tax Commission for the year 1927 at $18,410.00; that the ad valorem tax as levied by the Commissioners of the Mississippi Levee District for the year 1927 at the rate of five (5) mills on the dollar would be $92.05 which is approximately $4.90 per mile; that the amount of tax which defendant has already paid for the 1927 year to said Levee District for levee purposes, on the basis of $50.00 per mile is $920.50; that the tax as claimed by plaintiff on the basis of $350.00 per mile would be $6,433.50. The defendant will show that the tax as claimed by the plaintiff under said laws of 1886 as amended is seventy (70) times the amount of any just and fair tax or assessment on the property of this defeendant for levee purposes, and is, therefore, a denial of the equal protection of the laws as above stated. Defendant owns only 223 acres of land in the Mjssissippi Levee District which included a total area of approximately 1,300,000 acres. Therefore, defendant owns only .017% of the total area. Defendant has already paid taxes for the years 1926 and 1927. The amount of which [fol. 10] is .134% of the total revenue raised in said district for levee purposes, and if contentions of the State Tax Collector are sustained it would have to pay an amount which would be .947% of the total revenue. The amount of the tax which defendant would have to pay as claimed by the Revenue Agent is, therefore fifty-five (55) times greater than the tax defendant would have had to pay if the tax had been levied in proportion to area.

Defendant will further show that said Chapter 7 of the Laws of 1886 as amended is arbitrary and unreasonable and a denial of equal protection of the laws not only as to

this defendant, but as to railroad property generally in said Levee District; that there are in the Mississippi Levee District, and were during the years 1926 and 1927, only two railroads, to-wit: The Columbus & Greenville Railway Company having 18.41 miles of main track valued and assessed by the Mississippi State Tax Commission for the years 1926 and 1927 at $18,410.00 and $18,410.00 respectively, and the Yazoo & Mississippi Valley Railroad Company consisting of 117.15 miles of main line assessed by the Mississippi State Tax Commission at $3,514,500.00 or $30,000.00 per mile, for the year 1926 and $3,280,200.00, or $28,000.00 per mile for the year 1927. Defendant will show that the tax on the ad valorem basis of The Yazoo & Mississippi Valley Railroad Company main line would have been $14,058.00 for the year 1926, whereas under the mileage statute the tax actually claimed and collected at the rate of $350.00 per mile was $82,656.00; and the ad valorem tax on the property of said Yazoo & Mississippi Valley Railroad Company for the year 1927 would have been $16,441.00, whereas the mileage tax as claimed and collected on the basis of $350.00 per mile was $80,450.20. The amount of tax due from all railroads in said district on the mileage basis was, therefore, [fol. 11] over five (5) times as great in proportion to value as the tax imposed on other property in said district.

Defendant will further show that the defendant is not estopped to contest the validity of the said Act of 1885 the amount of the tax under said statute, which was fixed at the rate of $100.00 per miles, was not greatly in excess of the amount of the tax on the ad valorem basis; that the discrimination has become so excessive as to amount to a denial of equal protection of the laws only during recent years, and by reason of amendment in the said statute increasing the rate per mile to $350.00 per mile in 1914, and by reason of the judicial construction demanded at the instance of plaintiff in this suit declaring the amendment of 1926 to be void. Defendant would show that when the discrimination in the tax demanded of this defendant became so gross as to be unbearable, this defendant, before seeking the protection of the courts, sought and obtained the amendment to the said law of 1886 which was enacted by the Legislature, known as Chapter 259 of the Laws of 1926, which

amendment had the effect of fixing the levee tax of this defendant at the rate of $50.00 per mile, and thereby greatly lessening the discrimination against this defendant. Defendant would show that since this defendant obtained said relief from the Legislature the Mississippi Levee District has not claimed any higher or greater tax against this defendant than said tax of $50.00 per miles as fixed by said amendment, but now that the plaintiff is claiming tax at the rate of $350.00 per mile this defendant is forced for the first time to seek the protection of its constitutional rights.

Defendant would further show that the said Chapter 7 of the Laws of 1886 as amended in 1914 and in 1926, as above stated, is arbitrary, unreasonable and a denial of the [fol. 12] equal protection of the law, in violation of the said Fourteenth Amendment to the Constitution of the United States, and is an undue burden on interstate commerce and in violation of Clause 3, Section 8, Article 1 of the Constitution of the United States because the plaintiff claims that by virtue of Chapter 156 of the Laws of Mississippi of 1896, as amended from time to time, this defendant is also liable to pay taxes to said Mississippi Levee District for levee purposes based on the value of its property like all other owners of property in said district, and that the said mileage tax as imposed by the Act of 1886 as amended is not in lieu of all other taxes on railroad property for levee purposes as has been heretofore understood, but is an additional tax to be collected on railroad property in addition to the ad valorem tax imposed by said Act of 1896. Defendant will show that this plaintiff has commenced and is conducting a lawsuit against another railroad in said Mississippi Levee District to enforce the collection of said ad valorem tax on railroad property in addition to the mileage tax, and defendant is informed and believes, and so charges, that the plaintiff in this suit will attempt to enforce collection of said ad valorem tax from this defendant. This defendant charges that if the said Levee District, either through its own officers or through the plaintiff, the State Tax Commission, claims and attempts to collect the said ad valorem tax on the property of this defendant as well as the said mileage tax which is being sought in this suit, then the said mileage tax would be and is a double tax,

and for that reason a denial of equal protection of the laws and in violation of the Fourteenth Amendment to the Constitution of the United States, as above stated.

This defendant would further show that it is a railroad company engaged in the business of operating a railroad in interstate commerce which cannot be abandoned without the consent of the Interstate Commerce Commission; that [fol. 13] it is and has been for a number of years in such precarious financial condition that the additional burden attempted to be imposed by the plaintiff in this lawsuit would greatly endanger its ability to carry on its business in interstate commerce and would constitute a very serious and material burden on said commerce; that said burden would be out of all proportion to any benefits derived from levees or from the privilege of operating in said Mississippi Levee District.

Defendant will further show that the said Act of 1886 as amended, which provides for the tax at the rate of $350.00 per mile, also provides that whenever any reduction is made in other levee taxes, then the Board of Levee Commissioners of said district shall make a proportionate reduction in the taxes assessed by this Act for that year, and shall notify the Railroad Company or other person operating said railroad of such reduction. Under the plan of raising revenue for the Mississippi Levee District, which was in force at the time of the adoption of the Mississippi Constitution of 1890, the railroad levee tax was $100.00 per mile of main track and the rate of taxation for ad valorem taxes was five (5) mills. This proportion continued until 1904, when the date of ad valorem taxation was raised to ten (10) mills which resulted in the railroad tax being raised in 1908 to $200.00 per mile, thereby maintaining this same proportion. In 1914 the ad valorem tax rate was raised to Seventeen and a half (17½) mills, and the railroad tax to $350.00 per mile, thus still retaining this same proportion. In 1917 the ad valorem tax rate was reduced to eight (8) mills, but the Board of Mississippi Levee Commissioners failed and refused to reduce the railroad tax proportionately. From 1922 to 1924 the ad valorem tax was ten (10) mills, but the railroad tax remained at $350.00 per mile. In 1925 the ad valorem tax was eight (8) mills, and

[fol. 14] the railroad tax was not reduced. In 1926 the Board of Mississippi Levee Commissioners reduced the ad valorem tax to four (4) mills, but made no reduction in the railroad tax. In 1927 the Board of Mississippi Levee Commissioners fixed the ad valorem tax rates at five (5) mills, but made no reduction in the railroad mileage tax. Defendant claims that the provisions of the Act of 1886 as amended were mandatory requiring the Board of Levee Commissioners to make a proportionate reduction in railroad taxes, and that if such reduction had been made, the railroad mileage tax would have ben reduced from $350.00 per mile to $80.00 per mile for 1926 and to $100.00 per mile for 1927.

And defendant will further show and prove that the Yazoo & Mississippi Valley Railroad Company has a mileage in said Mississippi Levee District of 117.15 miles of its main line which runs in a southerly direction from Bolivar County practically parallel with the Mississippi River, and a short distance therefrom to the southern boundary of said Levee District, while the defendant, the Columbus & Greenville Railway Company has a mileage of only 18.41 miles, while said line of railroad runs almost at right angles, so to speak, from the Mississippi River beginning at Greenville, Mississippi, in an eastwardly direction in said Levee District; that the relative benefits received and enjoyed by the Columbus & Greenville Railway Company from overflow from the Mississippi River are very small indeed, as compared with the relative benefits received from over-flow from the Mississippi River by the Yazoo & Mississippi Valley Railroad Company, a much larger and much stronger line; that the Yazoo & Mississippi Valley Railroad Company is an interstate line of railroad, while the Columbus and Greenville Railway Company is a purely intrastate railroad running from Greenville in an eastwardly direction to the Alabama State line, a distance of 178.23 miles; that it would be unreasonable, unjust and out of all proportion to the benefits received by the Columbus & Greenville Railway Company in the way of protection from overflow by the levee sys- along the Mississippi [fol. 15] River to make it pay the same levee mileage tax, towit: $350.00 a mile that is assessed against and paid by the Yazoo & Mississippi Valley Railroad Company, and that to require the Columbus & Greenville Railway Com-

pany, a much weaker and shorter line, with a smaller roadbed and smaller rail, and other improvements, to pay the same levee mileage tax which is paid by the Yazoo & Mississippi Valley Railroad Company of $350.00 a mile would be the taking of defendant's property without due process of law, and would be also a denial to it of equal protection of the law in violation of the Fourteenth Amendment to the Federal Constitution. Said defendant, therefore, claims and avers that to put it in the same class with the Yazoo & Mississippi Valley Railroad Company for the purpose of taxation, and require it to pay the same tax, to-wit: $350.00 a mile, as is assessed and paid by the Yazoo & Mississippi Valley Railroad Company, would be a gross and unconscionable wrong to this defendant, and as is already said, would be a denial to it of equal protection of the law, and also the taking of its property without due process of law in violation of said Fourteenth Amendment to the Federal Constitution, all of which is respectfully submitted.

Vernon Rowe, Gardner, Ogden & Gardner, Attorneys for Defendant.

[File endorsement omitted.]

[fol. 16] IN CIRCUIT COURT OF MONTGOMERY COUNTY

MOTION TO STRIKE PARTS OF NOTICE—Filed Oct. 17, 1929

And now comes the plaintiff, by attorney of record, and respectfully moves the Court to require the defendant in said cause to strike out from the original notice filed under the general issue all such parts of said notice that are mere conclusion of law, and such parts as are mere conclusion of facts without stating any facts wherefrom such conclusion is drawn, so that the said defendant in the said notice filed under the plea of general issue limits the said notice as contemplated and authorized by Section 744, Mississippi Code 1906, and Section Hemingway's Code 1927, providing that if the defendant desires to prove "under the general issue in an action any affirmative matter in avoidance, which by the law may be proven under such plea, he may give notice for it in writing, etc."

That said notice, begining on the first page and ending on the second page with the words "Mississippi Levee District", recites no facts nor any matter which under the

law may ve proven, but merely a conclusion of law by the pleader and only tends to confuse the issue and befog the fair trial of said cause, and therefore is incompetent, irrelevant and redundant matter.

That beginning with the words "and the defendant will further show", in the said second page of said notice and down to the eleventh of said notice, which includes the words "and in support of said contention", should also be stricken out for the reasons hereinbefore set out. That all of the paragraphs, beginning with the last line on the said [fol. 17] second page, down to and including the nineteenth line on the third page, ending with the figure "$6,333.50", should be also stricken out. That beginning with the words "defendant will further show" on page four of the said notice and concluding with the words "tax imposed on other property in the said district" should be stricken out, and beginning with the middle of the last line on page five, to the words "constitutional rights" on page six, should also be stricken out; that all contained in page six of said notice be stricken out from the said notice, and also that part beginning at page seven including the words "United States", as above stated, may be stricken out; also all contained on pages seven, eight, nine and ten may be stricken out.

The said plaintiff also moves the Court to strike out the entire notice from the record for the reason that the said notice is so interwoven in its words and phrases, and the conclusions of law and conclusions of facts are so intermingled with other allegations that it can not be separate and distinct without creating a mess or confusion, and that the said entire notice from the beginning to the end is not the kind and class of notice contemplated by law or permitted under the practice and procedure heretofore recognized by this Honorable Court.

Wherefore, plaintiff respectfully moves the Court to strike out from the said file the notice under the general issue, as aforesaid, or to require the said defendant to file such notice, statement of facts or such evidenciary facts which under the well established rule of pleading and practice, said defendant be permitted to file or give notice of.

Franklin, Easterling & Canizaro, Attorneys for Plaintiff.

[File endorsement omitted.]

[fols. 18 & 19] IN CIRCUIT COURT OF MONTGOMERY COUNTY

No. 2047

W. J. MILLER, State Tax Collector for the Use of the Mississippi Levee District

vs.

COLUMBUS & GREENVILLE RAILWAY COMPANY

JUDGMENT—Oct. 17, 1929

This day came on to be heard the above entitled cause, but a jury being waived by the parties and the cause having been submitted to the court for decision without a jury by agreement, and the court having duly considered the evidence and the mandate from the Supreme Court in this cause and being fully advised in the premises and being of the opinion that the plaintiff is entitled to recover. It is therefore ordered and adjudged that the plaintiff W. J. Miller, State Tax Collector, do have and recover, for the use of the Mississippi Levee District, of and from the defendant, the Columbus & Greenville Railway Company, a corporation, the sum of $12,150.60 together with interest thereon at the rate of six per cent per annum from July 31st 1928 until paid, and all costs this suit, for all of which let execution issue.

Ordered and adjudged this 17th day of October 1929.

Jno. F. Allen.

[fol. 20] IN CIRCUIT COURT OF MONTGOMERY COUNTY

[Title omitted]

Statement of Evidence

CAPTION

Be it remembered that this cause came on to be heard on the 17th day of October, A. D. 1929, at the court house in the City of Winona, Montgomery, Mississippi, same being the time and place appointed by law for the holding

of said term of court, and there being present as officers of said court the Honorable John F. Allen, Judge of the Fifth Judicial District of Mississippi, presiding, Mr. L. L. Latham, Sheriff of said county, Mr. F. M. Wingate, Clerk of the circuit court, and W. W. DeLoach, official court stenographer of said district; and a jury being waived by the parties and the cause having been submitted to the court for decision without a jury, by agreement, the following proceedings were then and there had, to-wit:

APPEARANCES OF COUNSEL

Messrs. Franklin, Easterling & Rosenthal and Hon. —— Canizaro present and representing the plaintiff.

Hon. V. D. Rowe and Messrs. Gardner, Odom & Gardner present and representing the defendant.

[fol. 21] Thereupon the plaintiff offered the following evidence on his part, to-wit:

R. C. FRAZIER, being produced as a witness for the plaintiff, after first being duly sworn, testified as follows, to-wit:

Direct examination.

By Mr. Easterling:

Q. Mr. Frazier, what are your initials?
A. R. C.
Q. What is your business?
A. Publishing a newspaper.
Q. What newspaper is that?
A. The Leland Enterprise.
Q. Is that newspaper published in Washington County, Mississippi?
A. Yes, sir.
Q. What is your connection with that paper?
A. I am editor of the paper.
Q. Have you the records of that newspaper under your control and here before the court showing the publications of that paper?
A. Yes, sir.
Q. Have you examined the file*d* — that paper from September 1925 to January 15th, 1926?

A. Yes, sir.

Q. I will ask you to state whether or not a certain law entitled "A law to amend the act of 1886," in regard to railroad mileage taxes, being chapter 259 of the Laws of Mississippi, 1926, was published in your newspaper?

By Mr. Gardner: Counsel for the defendant objects to any testimony tending to show that the act in question [fol. 22] was not published in any newspaper in Washington County or in the levee district, for the reason that it is incompetent to attack the enrolled bill or go behind the enrolled bill now in the office of the Secretary of State and which is in the published acts of the Legislature of 1926; in other words, any testimony going to show the failure to publish this act is incompetent, irrelevant and immaterial, and counsel is precluded from going behind the enrolled bill in the office of the Secretary of State.

By the Court: The ruling of the court will be reserved to all this evidence.

Exceptions by defendant.

By Mr. Easterling:

Q. What was your answer to that?

A. No, sir; there was no notice published in our newspaper.

Q. No law changing the taxation of railroads was published from the period of September 1925 to January, 1926.

A. No, sir.

By Mr. Easterling: The act in question is Chapter 259 of the Laws of 1926, Senate Bill number 137, an act to amend section one, chapter 282, Laws of Mississippi, 1914, so as to reduce the tax on certain lines of railroad in the Mississippi Levee District.

AGREEMENT RE TESTIMONY OF L. P. SMITH

By Mr. Easterling: It is agreed by and between counsel representing the plaintiff and the defendant that Mr. L. P. Smith, the editor of the Daily Democrat Times, a newspaper published in Greenville, Mississippi, if offered as a witness would testify to the same facts in regard to the

publication of the law in his newspaper; that is, that this law was not published in his newspaper as required by the [fol. 23] constitution, and that these two papers are all of the newspapers published in the County of Washington, the domicile of the Mississippi Levee District. This agreement is put in subject to the ruling of the court as to the admissibility of the evidence, and the court reserves its ruling to same.

Cross-examination waived.

(Witness excused.)

By Mr. Easterling: We desire to offer in evidence, if your honor please, a certificate under the seal of the Mississippi Levee District showing the amount of mileage tax paid by the Columbus & Greenville Railway Company for the year 1926 and for the year 1927.

(Same is identified by the Stenographer as exhibit Number one).

Plaintiff rests.

[fol. 24] Thereupon the defendant offered the following evidence on its part, to-wit:

J. H. Rigby, being produced as a witness for the defendant, after first being duly sworn, testified as follows, to-wit:

Direct examination.

By Mr. Gardner:

Q. Mr. Rigby, I believe you are superintendent of the Columbus & Greenville Railroad Company?

A. Yes, sir.

Q. And have been how long?

A. Ten years.

Q. What are your duties as superintendent, Mr. Rigby?

A. I have charge of transportation and mechanical and road way.

Q. Are you familiar with the condition of the property of the Columbus & Greenville Railroad Company, you are perfectly familiar with that, are you?

A. Yes, sir.

Q. What is the length of the road way?

A. 167.7 miles.

Q. That is the part operated by the Columbus & Greenville Railroad Company?

A. Yes, sir.

Q. The other part of the line is operated by the Southern?

A. Yes, sir.

Q. Are you familiar with the Y. & M. V. R. R. property in the delta?

A. Only a portion of it.

Q. What portion of it?

A. Well, from Benoit on the north to Percy on the south, [fol. 25] about three miles south——

Q. I want you to tell the court now the relative condition of the road bed of the Columbus & Greenville Railroad way as compared with that of the Y. & M. V. R. R. Co., if you know?

By Mr. Easterling: Counsel for the plaintiff objects to the foregoing as being incompetent, irrelevant and immaterial.

By the Court: The ruling of the court is reserved. Exceptions.

By Mr. Gardner:

Q. Go ahead, Mr. Rigby?

A. Well, the Y. & M. V. road bed is higher, I should say from four to six feet higher than the road bed of the C. & G. and is wider, has heavier rails; the Y. & M. V. R. R. has ninety pound new rails while the C. & G. has sixty pound old rails.

Q. When were those rails bought on the C. & G.?

A. I don't know when they were bought.

By Mr. Easterling: We want to enter the same objections to all these questions.

By the Court: All right, the same objections will be entered to all this evidence and the ruling of the court will be reserved.

By Mr. Gardner:

Q. You don't know when those rails were bought?

A. It was put down between 1885 and 1889.

Q. What about the physical condition of the depots and other buildings of the two roads, how do they compare?

A. Well, the Y. & M. V. depots are more modern, and the C. & G.'s are old.

Q. What are the better depots?

By Mr. Easterling: I want to get another objection in the [fol. 26] record, Counsel for plaintiff objects further to this line of questions and answers and this evidence on the ground that the tax sued for here is not an ad valorem tax but is an improvement tax.

Ruling of the court is reserved.

By Mr. Gardner:

Q. Which are the better depots?

A. The Y. & M. V. is better, more modern.

Q. What about the other buildings on the Y. & M. V. as compared with the C. & G.?

A. They are all better because they are more modern and better maintained.

Q. How does the Y. & M. V. run with reference to the Mississippi Levee District?

A. It runs practically parallel with it.

Q. How does the Columbus & Greenville Railroad run with reference to it?

A. At almost right angles.

Q. Do you know how many miles of railroad of the Columbus & Greenville is in the Mississippi Levee District?

A. I think 18.41.

Q. Tell the court from your knowledge and experience as a railroad man the relative benefits received by the Y. & M. V. Railroad and the Columbus & Greenville Railroad from levee protection?

By Mr. Easterling: We object to that as it is a matter of conclusion.

Ruling reserved by the court.

By Mr. Gardner:

Q. What was your answer?

A. The Y. & M. V. Railroad receives more benefits on account of the mileage and more buildings and depots and [fol. 27] section houses and mechanical buildings.

Q. The Columbus & Greenville Railroad leaves the Mississippi river at Greenville, I believe?

A. Yes, sir.

Q. What part of the levee system is there north of Greenville?

A. I don't know.

Q. Do you know about how much of the levee system there is north of Greenville?

A. No, sir, do not.

Q. If Greenville be about the half way distance, what would you say about the benefits received by the Y. & M. V. Railroad and the Columbus & Greenville Railroad from the levee district?

Objection. Ruling reserved.

Q. Would the Columbus & Greenville Railroad be protected or benefited by the levee south of Greenville?

A. No, sir.

Objection. Ruling reserevd.

Q. Why?

A. Because the current from the river does the principal damage.

Q. The levees that the Columbus & Greenville Railroad gets protection from are north of Greenville?

A. Yes, sir.

Q. And not south of Greenville?

A. No, sir.

Q. Are there any large towns on the Columbus & Greenville Railroad?

A. Not in that district except Greenville.

Q. Any outside of Greenville?

[fol. 28] A. No, sir, none outside of Greenville.

Q. Is the Columbus & Greenville interstate road or intrastate road?

A. Intrastate road.

Q. After the Columbus & Greenville Railroad leaves the delta tell the court what kind of country it passes through to Columbus, Mississippi?

A. From Greenville to Carrollton it is level country, and from Carrollton to Columbus is hilly.

Q. What kind of land does it pass through?

A. Well, the land is more productive in the delta section.

Q. What about the hilly section?

A. It doesn't produce as much.

Q. Tell the court whether there are any large industries on the Columbus & Greenville Railroad?

A. It is principally the saw mills and planers.

Q. Any large industries?

A. No, sir.

Q. Where is the termini of the Y. & M. V. Railroad?

A. Memphis on the north and New Orleans on the south.

Q. What is the largest town on the Columbus & Greenville Railroad?

A. I expect Greenwood is the largest.

Q. Any other large towns besides Greenwood?

A. Well, Winona, West Point and Eupora.

Q. Tell the court what character of business originates on the lines of the Columbus & Greenville Railroad?

A. Principally cotton and cotton seed production; well, from Carrollton east it is lumber and logs.

Q. Are there any large industries on the Columbus and [fol. 29] Greenville Railroad?

A. No, no large ones.

Q. What about the rolling stock?

A. All of the rolling stock of the Columbus & Greenville is second hand equipment.

Q. How many locomotives have they?

A. Twenty-seven.

Q. Are any of them new?

A. No, sir, second hand.

Q. Has the Columbus & Greenville any new equipment?

Objection. Ruling reserved.

A. Yes, sir, we have four gas electric cars bought in 1928, motor cars.

Q. How does the rolling stock of the Columbus & Greenville Railroad compare with the rolling stock of the Y. & M. V. Railroad?

A. All of the Columbus & Greenville's is old except the four gas electric cars referred to, while the Y. & M. V.'s is more modern.

Q. What about the locomotives of the Y. & M. V. are they larger than the locomotives of the Columbus & Greenville?

A. Yes, sir the Y. & M. V. handles about three times the amount of tonnage that the Columbus & Greenville engines will handle.

Q. What about the size of the rails?

A. The Y. & M. V. has new ninety pound rails, while the Columbus & Greenville has sixty pound old rails.

Q. Is this equipment of the Y. & M. V. new or second hand?

A. It is new.

Q. Do you know the capital stock of the Y. & M. V.?

A. No, sir, do not.

[fol. 30] Q. How long has the present management been operating the Columbus & Greenville Railroad?

A. Since, 1923.

Q. Since 1921 or 1923?

A. The receiver came in 1921 and it was reorganized in 1923.

Q. Do you know how many times this road has been in the hands of a receiver?

A. No, sir, do not.

Q. And it emerged from the receivership in 1923?

A. Yes, sir.

Q. You don't know whether the capital stock of the Columbus & Greenville Railroad is one hundred thousand dollars or not?

A. No, sir.

Q. How about the grades; are there any heavy grades on the Columbus & Greenville?

A. Yes, sir.

Q. Where are they?

A. The heaviest is just west of Winona about four miles.

Q. What is the result of that grade; what does it do?

A. It reduces the tonnage that could be handled; the engines can't handle the tonnage over those grades.

Q. How do you handle your freight trains on this road?

A. Most of them are what we call double headers, two engines handle them on account of the grades.

Q. How many trains do you operate as double headers?

A. We operate two each way a day.

Q. What size engines are they?

A. The cylinders are eighteen by twenty-six and the tractive power is twenty three thousand pounds.

Q. What about your freight trains as compared with the feight trains of the Y. & M. V. Railroad?

[fol. 31] A. Well, one engine on the Y. & M. V. will handle about three times the tonnage that our engines will handle.

Q. How many more freight cars will one engine handle on the Y. & M. V. Railroad than on the Columbus & Greenville?

A. We handle twenty-six or twenty-seven while the Y. & M. V. Railroad handles between ninety and a hundred.

Q. They handle about four times as much as you?

A. Yes, sir.

Q. What about the shop equipment of the Columbus & Greenville Railroad?

Objection. Ruling reserved.

A. It is antiquated.

Q. What is the physical condition of the property of the Columbus & Greenville Railroad as compared to the Y. & M. V.?

A. The property of the Y. & M. V. is much better.

Objection. Ruling reserved.

Q. How many shops does your road have?

A. The principal shop is at Columbus and a small shop at Greenville.

Q. What kind of shop do you have at Columbus?

A. Its an old shop and old machinery.

Q. What about the one at Greenville?

A. Its the same way.

Q. What about your passenger coaches?

A. They are all old, second hand.

Q. Have you any new equipment at all except these motor cars?

A. No, sir.

Q. How many freight cars did you have in 1926?

A. In 1926 we had twenty-five box cars; we had about seventy five freight cars altogether.

Q. In 1926?

[fol. 32] A. Yes, sir.

Q. How many locomotives did you have?

A. Twenty-seven.

Q. What was the cost of these twenty-seven locomotives about?

A. I think they cost about three thousand dollars a piece.

Q. That is second hand?

A. Yes, sir.

Q. What would they have cost now?

A. I couldn't say, Mr. Gardner, because they don't make any thing like that now.

Q. Why?

A. They are so old; they are about forty years old.

Q. What is the character of your locomotive?

A. They are old, out of date.

Q. Have you any new locomotives at all?

A. No, sir.

Q. Have you any new equipment at all except the four motor cars?

A. Nothing except some box cars that we bought on the credit.

Q. How many passenger trains do you operate on this road a day?

A. Two each way.

Q. How many freight trains do you run?

A. We have six, three each way a day.

Q. So you run six freight trains and how many passenger trains?

A. Two each way.

Q. Do you know anything about how many freight and passenger trains operate on the Y. & M. V.?

A. I don't know, I don't have any idea what they operate because it varies so, especially the freight.

Q. What kind of trains do the Y. & M. V. run, shorter or longer than the Columbus & Greenville?

[fol. 33] A. Longer than the Columbus & Greenville.

Q. How much longer?

A. Very often ninety cars.

Q. How many engines on the Columbus & Greenville Railroad would it take to pull those ninety cars?

A. About three engines.

Q. And you say this road emerged from the receivership in 1923?

A. Yes, sir.

Q. Mr. Rigby, I want to ask you about the cost of construction of the road bed of the Y. & M. V. and the C. & G.; what would you say was the relative heights and widths of the road beds?

A. The road beds of the Y. & M. V. is four to six feet higher than the C. & G.

Q. And how much wider?

A. It varies from two to four feet wider on account of the heavier engines.

Q. Is there any ballast on the Y. & M. V. Railroad?

A. Yes, sir, they have about four times as much ballast as we have.

Q. Tell the court about the trestles?

A. Those trestles on the Y. & M. V. are built of creosoted timbers; it is more expensive than the untreated pine on the C. & G.; the trestles on the C. & G. are just ordinary trestles built of un-treated timbers; the ballast deck trestles of the Y. & M. V. cost about thirty dollars a lineal foot, while the open deck type of the C. & G. cost about seventeen dollars a lineal foot.

Q. What about the iron bridges on the Columbus & Greenville Railroad, how many or how long have they been built and what is their lengths?

A. They are from a hundred and fifty feet to about four hundred and fifty feet.

[fol. 34] Q. Do you know every one of them?

A. Well, the bridge over the Tombigbee River is about a hundred and fifty feet long; it was built I believe in 1925, and the bridge over the Yazoo River is about four hundred and fifty feet; it was built in 1885—between 1885 and 1889.

Q. What is the condition of that bridge now?

A. It is very light; it was built between 1885 and 1889.

Q. What is its condition now?

A. Its in bad condition.

Q. What effect, if any, does that have on your transportation?

A. Well, you can't use heavy trains, heavy engines; the light engines are the only ones we can use over that bridge.

Q. How long is that bridge?

A. About four hundred and fifty feet; its three spans.

Q. That is the longest bridge you have; isn't it?

A. Yes, sir.

Q. What would it cost to replace that bridge; have you any idea?

A. No, sir, I haven't any idea.

Q. It is very expensive, isn't it?

A. Yes, sir.

Q. What is the next longest bridge?

A. The other three are all practically the same; Sunflower bridge is a more modern bridge; that was built I believe in 1915.

Q. That was before the receivership?

A. Yes, sir.

Q. One bridge has been built since the receivership only, and that was the bridge across Tombigbee River?

A. That bridge was built in 1915; it wasn't built since the receivership.

Q. Tombigbee River bridge was built when?

A. In 1915.

[fol. 35] Q. That was six years before the receivership?

A. Yes, sir.

Q. And the bridge across Sunflower was built then?

A. In the same year.

Q. What is the condition of those bridges now?

A. They are very good bridges.

Q. Have they been repaired?

A. Yes, sir.

Q. How many passenger trains did you say ran a day each way?

A. Two each way.

Q. And three freight trains each way a day?

A. Yes sir.

Q. Now with reference to your cross tries, what is the condition of your road bed compared with the Y. & M. V.?

Objection. Ruling reserved.

A. Ours is fair, and I will say that portion I am acquainted with the Y. & M. V. is good.

Q. What kind of ties do they use?

A. They use treated ties while we use partly treated and partly untreated.

Q. What road has the most ties?
A. The Y. & M. V.
Q. They are all creosoted, are they?
A. Yes, sir.
Q. Is there any difference in the rest of the ties your road uses and the ties of the Y. & M. V. use?
A. Yes, sir, the ties they use average about a dollar thirty-five, while the untreated ties average about eighty-five cents.
Q. The ties they use are creosoted?
A. Yes, sir.
Q. What is the longest freight train of the Columbus & Greenville Railroad that it takes two engines to pull?
[fol. 36] A. Between twenty-five and thirty loaded cars.
Q. What is the longest freight train the Y. & M. V. will carry with one engine?
A. I don't know the length; they carry between ninety and a hundred cars.
Q. And the greatest of your road is how many?
A. Twenty-five or thirty.
Q. Do you mean with one engine?
A. It takes two engines in the hills to handle twenty-five or thirty cars.
Q. I am speaking about the Y. & M. V., they handle between ninety and a hundred cars with one engine?
A. Yes, sir.
Q. That's all.

Cross-examination.

By Mr. Easterling:

Q. What did you say your name was?
A. Rigby.
Q. Mr. A. T. Stovall is your President?
A. Yes, sir.
Q. Do you know how much salary he gets?
A. I don't know sir.
Q. Isn't his salary twenty-five thousand dollars a year?

Objection. Ruling reserved.

A. I am not familiar with that at all.
Q. You have charge of the railroad bed and transportation?

A. Yes, sir, road way.

Q. Mr. Rigby, you know, as a matter of fact, from your experience in the delta that nearly all of the water ways is [fol. 37] what is denominated the delta section of Mississippi run parallel to the river, do they not, the main water courses?

A. Yes, sir.

Q. And the railroad in running east and west would cross more drainage canals and bayous and sloughs than one running north and south, wouldn't it.

A. Yes, sir, I expect so.

Q. Because the drainage runs parallel with the river?

A. Yes, sir.

Q. Could you tell us off hand how many trestles you have on your line in the delta district?

A. No, sir, I could not.

Q. They are every hundred feet or so apart, are they not.

A. Not that close.

Q. Well, every two or three hundred feet you have got a place for the water to pass under, for the drainage canals, bayous and sloughs, haven't you?

A. There is several drainage canals.

Q. You have to have a good many trestle to let the water pass under, don't you?

A. Yes, sir.

Q. You raised your road bed a couple of feet in 1927 after the overflow, didn't you?

A. We raised it some, it varied.

Q. As a matter of fact, where the Mississippi River would break, as it did north of Greenville in 1927, the tendency is to flood all these drainage canals and bayous and things that run south?

A. Yes, sir.

Q. As a matter of fact, in that last overflow more of your road bed was washed away than the Y. & M. V. wasn't it, because it hit your road side ways? Wasn't practically all of your road bed washed away in places? [fol. 38] A. It was washed away in places.

Q. Sometimes it would be as much as a mile or a mile and a half, wouldn't it?

A. Yes, sir.

Q. Washed it clear off?

A. Yes; sir.

Q. That was because the tendency of the water was to go south?

A. Yes, sir, it struck it nearly at right angles.

Q. Do you know what your road made net profit in 1925?

A. No, sir, don't.

Q. If the report to the railroad commission shows a net profit of $85,124.25, don't you know whether they made a profit?

A. Yes, sir, they made a profit.

Q. Does that sum sound right?

A. I don't know.

Q. They did make a profit?

A. Yes, sir.

Q. In 1926 if the report shows $159,392.98 would you say they made a profit? Do you remember about 1926, that was your banner year, wasn't it?

A. I think it was.

Q. And in 1927 the report shows $105,145.07 would you say that is correct?

A. I don't know exactly about that.

Q. I want you to answer another question. Isn't it a fact that your company has ordered three hundred new box cars?

A. Yes, sir.

Q. And isn't it further true that your company is figuring on selling to the Missouri Pacific?

A. I don't know that, I have heard it only through the newspapers.

Q. Do you know what the valuation of your railroad is as claimed by your company for the purpose of getting rates fixed?

[fol. 39] A. No, sir, I do not.

Q. You know you have to have a rate fixed by the Interstate Commerce — a valuation upon which the rates are fixed, don't you?

A. Yes, sir.

Q. I will ask you do you know that the Interstate Commerce Commission protested against a valuation of $4,470,534.00 and asked for an increase in the valuation of the road bed and equipment?

A. No, sir, I don't know that.

Q. That the railroad asked for an increase in valuation of the road bed and equipment?

A. No, sir.

Q. Do you know whether you were advised that your company claimed the valuation of that road should have been $6,948,549.00?

A. No, sir.

Q. You don't remember?

A. No, sir.

Q. You know that the Interstate — Commission valued it?

A. I don't know except what I read in the newspapers; the valuation was handled before I came here I believe in 1915.

Q. It was completed in 1924, wasn't it, the valuation on railroads?

A. Yes, sir, the results was probably obtained then, but the actual work in the field was done before 1920; that was before I came here.

Q. You were talking about the Y. & M. V. road and said you were familiar with it from Benoit to Percy?

A. Yes, sir.

Q. Now Percy is about twenty miles south of Leland, isn't it?

[fol. 40] A. Yes, sir, about that far south of Leland.

Q. As a matter of fact, the Y. & M. V. Railroad has a good many miles of feeder track through the delta, haven't they?

A. Yes, sir.

Q. They have a line that runs from Leland to Greenville?

A. Yes, sir.

Q. You have a line that runs out to Swan Lake?

A. Yes, sir, it has quite a net work of tracks.

Q. Isn't it a fact, Mr. Rigby, that until 1926 when this law was changed on mileage tax you all had been paying the same mileage tax as the Y. & M. V.?

A. No, I don't know anything about that.

Redirect examination.

By Mr. Gardner:

Q. I hand you a map made by the railroad commission of the State of Mississippi; examine it and note that the

railroad marked in red and in this levee district, what road is that?

A. The Y. & M. V.

Q. Note here at Greenville, what road is that running east?

A. The Columbus & Greenville Railroad.

Q. Now then, I will ask you to state about in what position is Greenville with reference to the termini of this district?

A. It is about sixty per cent south of Greenville.

By Mr. Gardner: We wish to introduce this map and have it identified as exhibit number two to the testimony of Mr. Rigby.

(It is so identified by the Stenographer.)

[fol. 41] By Mr. Easterling:

Q. Mr. Rigby, you say you have 169 miles of railroad?

A. It is actually 167.7 main line that we operate.

Q. The Interstate Commerce Commission shows the line is a distance of 179 miles and a fraction, and 110 miles that is leased to the Southern?

A. Yes, sir.

Q. Could you tell me if the Columbus & Greenville Railroad Company asked to have a valuation fixed upon the road of $6,948,549.00, and divide, that by the number of miles in the road as given by the Interstate Commerce Commission of 179 miles, what valuation would that give you per mile?

A. I couldn't say.

Q. You can figure it out, can't you; divide that; it won't take but a minute and see what it is?

Objection. Ruling reserved.

Q. Divide that by the total mileage of 179 miles, the valuation of $6,948,549.00 and what that will be?

A. 3882.

Q. That would be $38,000.00, wouldn't it?

Q. For each mile, practically?

A. Yes, sir.

Q. The Interstate Commerce Commission valued your road at $4,470,534.00, and if you divide that by 179, the

number of miles of road, that would give you about $24,400.00 per mile, wouldn't it?

A. I haven't figures for that.

Q. You testified while ago that your chief danger from the levee was if it broke north of Greenville. State if it isn't a fact that if the levee would break fifteen or twenty miles south of Greenville and the water would be as high as it was in 1927, if it would flood both sides of your road-[fol. 42] bed?

A. The back water might reach there.

Q. Your road would be affected by the back water coming up the streams, wouldn't it?

A. Yes, sir.

Q. That is the way it goes, coming up the streams?

A. Yes, sir.

By Mr. Gardner:

Q. Would it affect the railroad?

A. If the water covered it as it did in 1927 it would.

By Mr. Easterling:

Q. It would flood the entire track on both sides?

A. I don't know that it would reach it. A break fifteen or twenty miles south of Greenville, I don't know that it would reach Greenville; we have never had any experience of that kind.

Q. You do know that in 1927 when the levee broke about eighteen miles north of Greenville that the bulk of the water came down that bayou that runs through Leland, did it not?

A. Considerable of it did.

Q. It came out at an angle?

A. Yes, sir.

Q. Judging it by the height of the water in 1927 you do know that the levee breaking north of Greenville, eighteen miles north, that your entire road bed was covered with high water in 1927?

A. Yes, sir.

Q. And of course if the water would flood the road bed on either side it would interfere with your carrying passengers and freight?

A. It wouldn't check the travel unless it would wash out a trestle.

[fol. 43] Q. And the water going in the low places would endanger doing what you would do?

A. Yes, sir.

Q. Even the Y. & M. V. tracks were under in a good many places in 1927, were they not?

A. Yes, sir.

Q. Do you pay taxes in the delta?

A. No, sir.

Q. You don't live over there?

A. No, sir.

Q. You don't know what taxes are imposed over there?

A. No, I do not.

Q. You take an ordinary farm in the delta, say 600 acres, that we will say is worth $50.00 an acre, $30,000.00, do you know about how much cotton they produce per acre in the delta?

A. No, sir.

Q. Do you spend most of your time in the delta?

A. No, sir.

Q. You have supervision of the track?

A. Yes, sir.

Q. You all haul a good deal of cotton through?

A. Yes, sir, we handle more in the delta.

Q. Does your railroad collect the cotton tax imposed on cotton?

A. I don't have anything to do with that.

Q. You do know your railroad collects the tax?

A. I don't know, I think so.

By Mr. Gardner:

Q. Now the break in 1927, how far was the delta overflowed north of that break; would you say any land north of the break overflowed?

A. I don't think so, not north of it.

[fol. 44] Q. If a break should occur fifteen miles below Greenville would it effect your railroad fifteen miles north of it?

A. I don't know that it would.

Q. Now the break in 1927, tell the court how far that break effected the lands north of the break, didn't the water all go south?

A. It went south.

Q. It didn't effect any of the lands north of it?

A. Not that I know of, not over 100 yards.

Q. These freight cars you were asked about just now, tell the court how these cars were bought, any cash paid at all?

A. I don't know, Mr. Gardner, I didn't handle that matter.

Q. As a matter of fact, they were bought on a credit, weren't they?

A. I think so.

By Mr. Easterling:

Q. He was asking you about the overflow north of the break; isn't it a fact that all of the low places and bayous were swollen up north of the break?

A. I don't know, I wasn't north of Benoit.

By Mr. Gardner:

Q. Benoit was above the break?

A. Yes, sir.

Q. And that was not overflowed?

A. No, sir.

Q. Wasn't overflowed there?

A. No, sir.

By Mr. Easterling:

Q. Do you know whether that was high land there at Benoit or whether it was in a valley?

A. I couldn't say, it is about like all delta country.

[fol. 45] By Mr. Gardner:

Q. And none of it was overflowed?

A. No, sir.

Q. You don't know whether those freight cars—to the best of your information were those freight cars paid for cash or bought on credit?

A. I don't know.

Q. You don't know?

A. No, sir.

Q. That's all.

(Witness excused.)

Court here recessed from twelve o'clock, A. M. to one o'clock P. M., and thereupon the following proceedings were further had, to-wit:

[fol. 46] Z. P. Hawkins, being produced as a witness for the defendant, after first being duly sworn, testified as follows, to-wit:

Direct examination.

By Mr. Gardner:

Q. Mr. Hawkins, what are your initials?
A. Z. P.
Q. Where do you live?
A. Winona.
Q. What is your occupation?
A. I am assistant freight agent of the Columbus & Greenville Railway Company.
Q. Now, Mr. Hawkins, Mr. Rigby was asked this morning by counsel on the other side about the purchase of 300 box cars by the Columbus & Greenville Railroad Company; state whether or not you know anything about that purchase?
A. Yes, sir.
Q. When were those cars purchased?
A. Sometime during the last three months.
Q. By what authority?
A. By authority of the finance docket of the Interstate Commerce Commission.
Q. How much do those cars cost?
A. $570,000.00.
Q. Were they bought for cash or on a credit?
A. The title of the cars is not to invest in the Columbus & Greenville Railwaq Company until they are paid for.
Q. Each car is placarded to that effect?
A. Yes, sir.

By Mr. Easterling: We object to all this testimony as incompetent, irrelevant and immaterial.

[fol. 47] Ruling reserved.

By Mr. Gardner:

Q. What is the capital stock of the Columbus & Greenville Railway Company?

A. One hundred thousand dollars.

Q. What is the capital stock of the Y. & M. V.?

A. I understand that the capital stock of the Y. & M. V. is twenty five million dollars.

Q. Do you know whether the stock of the Columbus & Greenville Railway Company has any value?

A. No, sir.

Q. Can you buy any stock of the Y. & M. V.?

A. It is my understanding you can't buy it at any price.

Q. Have you had any experience with overflows on the Mississippi River?

A. Yes, sir, in Tensas Parrish in Louisiana about ten miles from the river.

Q. When was that, during a break of the Mississippi River?

A. Yes, sir.

Q. Yell the court how that break effected the land north of the break, the water?

Objection. Ruling reserved.

A. The break in this instance was below a place owned by my father down there, and it didn't effect our place, it was below that, our place was north of the break.

Q. How far north?

A. I will say between seven and ten miles.

Q. How close did the water come to your place?

A. It was probably six miles below us.

Q. In other words, the water didn't back up more than a mile from the break, north of the break?

A. A mile or a mile and a half.

[fol. 48] Q. Do you know how far the Y. & M. V. Railroad ran their trains during the break of 1927?

A. Yes, sir, the trains ran to Benoit.

Q. That was two miles north of this break in 1927?

A. Yes, sir.

Q. This overflow of 1927 didn't effect the operation of the trains down to Benoit?

A. No, sir.

Q. Take the witness.

Cross-examination.

By Mr. Easterling:

Q. Isn't it a fact that the land is higher near the levee than it is further east, and the drainage extends east and south?

A. I couldn't say, I don't know about that.

Q. Benoit is close to the levee, is it not? State of your own knowledge, if you know, whether or not when that break occured in 1927 if the water did not fill all the bayous and sloughs and even the Yazoo River and cause it to fill up its banks?

A. I don't know, I couldn't say; I will say that it did not effect the operations of the railroads from Benoit north.

Q. Benoit, that is—Benoit is right close to the levee, is it not?

A. Yes, sir.

Q. You won't attempt to tell the court if it didn't north of Leland, that low strip of country, you won't tell the court that land didn't go under during the break, will you?

A. No, I wouldn't say.

Q. You wouldn't say it did not in the low places?

A. No, sir.

[fol. 49] Q. Are you familiar with the delta section of this road?

A. Yes, sir, fairly well.

Q. Do you know—You are an assistant auditor?

A. No, sir, I am the assistant general freight agent.

Q. Do you know anything about the income your company has made in the last three years, 1925, 1926, 1927 and 1928?

A. No, sir, my duties don't require me to work with income or expenditures, I don't know anything about it.

Q. Well, all you know about it is they bought the box cars?

A. I know they bought the box cars.

Q. If the capital stock of the road was a hundred thousand dollars, if in 1925 the company made eighty five thousand dollars profit, and a hundred and fifty nine thousand dollars profit in 1926, and a hundred and five thousand dollars profit in 1927; for 1926, it would have taken in in income of that year more than one and one half times the capital stock, would it not?

A. If its net income for 1926 was one hundred and fifty nine thousand dollars and its capital stock was one hundred thousand dollars, it would.

Q. It would be pretty good stock looks like, it would, would it not?

A. Yes, sir.

By Mr. Easterling: I am going to offer this certificate as Exhibit number one to Mr. Hawkins evidence.

(It is so identified by the stenographer.)

By Mr. Easterling:

Q. In order to get permission to buy the box cars you had to take that up with the Interstate Commerce Commission?

A. Yes, sir.

Q. The rates you charge for freight is based on tariffs [fol. 50] promulgated by the Interstate Commerce Commission?

A. No, sir.

Q. For interstate shipments of freight where you handle freight on part haul, where it goes through, don't you get a pro rata part of the freight?

A. Yes, sir.

Q. And your rates in Mississippi are fixed by the railroad commission?

A. Yes, sir.

Q. But the Interstate Commerce Commission has to give you authority to buy cars?

A. Yes, sir.

By Mr. Easterling: I want to introduce this phamp-let got out by the Southern Railway Company in Mississippi.

Objection. Ruling reserved.

(It is identified by the Stenographer as exhibit number two to the testimony of the witness.)

Q. Do you know anything about the valuation fixed on your railroad by the Interstate Commerce Commission?

A. No, sir.

Q. Nothing about that at all?

A. No, sir.

By Mr. Gardner:

Q. You don't know what the bonded indebtedness in 1924 and 1925 was, do you?

A. I know nothing about the bonded indebtedness—you mean of the Southern Railway Company?

Q. Yes.

A. I know nothing about that.

Q. That's all.

(Witness excused.)

[fol. 51] By Mr. Gardner: We introduce the assessment of the State Tax Commission of the Y. & M. V. Railroad and of the Columbus & Greenville Railway Company for the years 1926, 1927 and 1928.

(It is identified by the Stenographer as Exhibit "A.")

By Mr. Easterling: We object to the introduction of the foregoing for the reason that the tax sued for in this case is not an ad valorem tax but a tax for benefits, and because the same is incompetent, immaterial and irrelevant in this suit.

By the Court: The ruling is reserved:

By Mr. Gardner: We introduce the certified copy of the classification of the railroads for the purpose of levying privilege taxes for the years 1926 and 1927.

(It is identified by the Stenographer as Exhibit "B".)

By Mr. Easterling: Plaintiff objects to the introduction of the foregoing as being a classification for state privilege license by the Mississippi Railroad Commission, and it is incompetent, irrelavant and immaterial.

Ruling of the court is reserved.

Defendant rests.

[fol. 52] Thereupon the plaintiff offered the following evidence, rebuttal, to-wit:

L. F. Easterling, being produced as a witness for the plaintiff, after first being duly sworn, testified as follows, to-wit:

Direct examination.

By Mr. Canizarro:

Q. What is your name, please?

A. L. F. Easterling.

Q. Judge, what profession do you follow?

A. I am a lawyer and also have been operating a plantation for a good many years—by proxy.

Q. Where is your plantation located, Judge?

A. In Washington County on Lake Washington.

Q. That is within the levee district?

A. Yes, sir.

Q. How many acres of land do you own?

A. Well, approximately—the deed calls for 605 acres and maybe a little more around the margin of the lake, low lands.

Q. What do you value that property at, about, in round figures?

A. Well, I don't know what I value it at; I haven't been able to sell it in a good many years, and I still owe somewhere maybe thirty-eight to forty dollars an acre on it, have been paying on it about nine years.

Q. What is it worth about?

A. Well, it is hard to form an idea; the value depends on what somebody else will pay; I pay $75.00 an acre for it.

Q. What would you take for it today?

[fol. 53] Objection. Sustained. Exceptions.

Q. What have you been offered for it?

A. I will say the way the market is selling now it would be worth around fifty five or six dollars an acre, about what I think the market is.

Q. How much have you been offered for your place?

A. Well, I don't know whether you call it an offer or not but I would say that the value would be somewhere around thirty thousand dollars, I might get that.

Q. In normal conditions how many bales of cotton can you raise on that farm, Judge.

A. Well, I haven't worked all of it; some years work 225 or 250 acres in cotton maybe, have the other in meadow and pasture.

Q. I will ask you how many bales of cotton you can raise on that farm under normal circumstances?

A. It will raise from three quarters to a half a bale per acre, and some of it a bale, it depends on how the land is worked and the situation and so forth; this year I have got in about 225 acres and will get about 125 bales.

Q. I want to ask you this question: In addition to the state and county tax, state to the court what levee tax are you paying on that property?

Objection as incompetent. Ruling reserved.

A. I pay just like all other property owners, it is fixed by law, an acreage tax.

Q. How much is that?

A. I don't know what it is this year, it has been five cents an acre, and for the 600 acres would be $30.00; then we pay a cotton tax, it varies each year, in the last seven or eight years it has been $1.50 a bale, and now it is a dollar a bale, and it has been $1.25 a bale.

[fol. 54] Q. You are paying $1.50 a bale on 200 bales of cotton, if you pay that it will amount to what sum?

A. If I raised 200 bales and paid $1.50 a bale it would be $300.00, and I don't know what it is this year, I think last year it was so much a hundred pounds, twenty cents a hundred, isn't it, Judge?

By the Court: Yes, it was last year.

By Mr. Canizarro:

Q. You are paying an ad valorem tax in addition to that?

A. Yes, sir, five mills and four mills.

Q. Do you know what it was in 1926?

A. I think it was four mills in 1926, five mills I think in 1927, if I am not mistaken, I don't remember exactly, four or five mills, and it has been eight in years back, may be higher.

Q. Judge, if you had your entire 600 acres planted in cotton could you get as much as 400 bales of cotton?

A. A normal year I expect it would make it; under ordinary circumstances you would average from a half to three quarters of a bale to the acre.

Q. The cotton tax in that instance would amount to about $600.00?

A. It would amount to whatever the tax was a bale, if it was a dollar a bale and make 300 bales it would be $300.

Q. I am not going to ask you if you have made any money planting cotton?

A. I think that would be a pregnant negative, Judge.

Q. You will have to pay that tax whether you make any gains or whether you lose?

A. They never consult me about whether I make any profit on the cotton, I pay the tax whether I lose or win.

[fol. 55] Q. So under normal conditions if you planted your entire 600 acres and made 400 bales of cotton you tax will amount to over $650.00 per year, wouldn't it?

A. At $1.50 per bale it would?

Q. On a thirty thousand valuation?

A. Yes sir.

Q. Judge, do you know of your own knowledge whether other plantation owners in the levee district make as much as 400 or 500 bales of cotton on 600 acres?

A. Oh yes, it depends on the degree of cultivation and the tenants they have; the delta makes very good crops where the land is worked, has in the last three or four years where you have sufficient tenants to work the land.

Q. You haven't had the Interstate Commerce Commission to give you the privilege of raising the price of cotton, have you, Judge?

A. I wish they would.

Q. Judge, tell the court of your own knowledge is that the general condition that exists in the levee district in the delta in regard to taxation?

A. Well, my general knowledge of course is everybody pays these three taxes, the advalorem tax, the cotton tax and the acreage tax.

Q. Any cotton shioped out of the delta, the railroad is liable and it is a penalty for anybody to try and ship cotton without paying the tax?

A. Yes, sir.

Q. That's all.

Cross-examination.

By Mr. Gardner:

Q. You haven't made any money farming, have you?

A. I won't truthfully say I can, it isn't all out of the field [fol. 56] yet.

Q. Take my advice and join the cotton association.
A. I belong to it.
Q. That's all.

Witness excused.
Plaintiff rests.
Defendant rests.

By the Court: The court now passing on the objections of plaintiff wherein the ruling was reserved heretofore sustains the objections of the plaintiff, and as to the objections of the defendant, same are overruled.

To which action and ruling of the court the defendant the Columbus & Greenville Railway Company then and there duly and legally excepted.

[fol. 57] STENOGRAPHER'S CERTIFICATE

I, W. W. De Loach, Official Court Stepographer of and for the Fifth Judicial District of Mississippi, do hereby certify that the above and foregoing thirty-seven pages in the cause styled as shown on the caption hereof, constitute and contain a full, true and correct copy of my original stenographic notes as taken by me on the trial of said cause, and that I reported all testimony, objections and exceptions of counsel and rulings of the court to the very best of my skill and ability as a stenographer.

I further certify that I have this day forwarded by express prepaid one carbon and one original copy of said transcript to F. M. Wingate, Clerk of the Circuit Court of Montgomery County, at Winona, Mississippi, and that I have notified all counsel of record in said cause of the completion and filing of said transcript with said clerk.

Witness my signature on this October 23rd, 1929.

W. W. De Loach, Official Stenographer.

[fol. 58] EXHIBIT

Mississippi Railroad Commission

Jackson, Miss.

Docket No. 5897

Classification of Railroads.

Section 3856 of the Code of 1906, as amended, requires that the Mississippi Railroad Commission shall, annually, on or before the first Monday in August, classify the several railroads doing business in the State of Mississippi for the purpose of levying a privilege tax.

It is therefore ordered, That the several railroads doing business in the State be classified for the purpose of levying privilege taxes for the fiscal year 1926-27, as follows: Viz.:

Name of railroad	Class
Illinois Central R. R., Main line	1
Miss. Ala. Branch	2
C. A. & N. Branch	2
Meridian, Brookhaven & Natchez	3
B'Haven & Monticello	3
Other Branches	3
Yazoo & Mississippi Valley Railroad, Main line	1
Lake Cormorant-Gwin-Asylum	1
Leland-Greenville	1
Rosedale to Dockery	2
Lambert via Ruleville Branch	2
Clarksdale to Swan Lake Branch	2
Gwin to Durant, Parsons-Grenada	2
Natchez to Jackson Branch	2
All other Branch Lines	3
Mobile & Ohio R. R., Main lines	1
Branch lines	3
Southern Railway, Memphis & Charleston	1
Alabama Great Southern	1
New Orleans and Northeastern	1
Okolona Branch	3
Columbus & Greenville Railway, Main line	3
Branch lines	3

	Class
Alabama & Vicksburg Ry	1
Louisville & Nashville R. R.	1
Kansas City, Memphis & Birmingham, Main line	1
Branch lines	2
Gulf & Ship Island, Main line	2
Laurel Branch	3
Columbia Branch	3
Gulf, Mobile & Northern R. R., Main line	2
Branch lines	3
Mississippi Central R. R.	3
Fernwood, Columbia & Gulf	3
Natchez & Southern R. R	3
Natchez, Columbia & Mobile R. R	3
Miss. & Alabama R. R	3
[fol. 59] Mississippi Export R. R. Co	3
Batesville, Southwestern R. R	3
Chicora Northwestern	3
Meridian & Memphis R. R	3
Mississippi Eastern R. R	3
Sardis & Delta R. R	3
De Kalb & Western R. R	3
Pearl River Valley R. R	3
Kosciusko & Southeastern R. R	3
Mississippi & Western R. R	3
Jackson & Eastern R. R	3
Itta Bena & Belzoni R. R	3
Mississippi Southern R. R	3
Memphis & Lake View R. R	3
Gulfport Miss. Coast Traction Co	3
New Orleans Great Northern R. R	2
Mississippian Railway	3
Bonhomie & Hattiesburg Southern R. R. Co	3
Itta Bena, Schlater & Minter City R. R. Co	3

O. B. Quin, Jr., Secretary.

I, J. W. Williams, Secretary of the Mississippi Railroad Commission, hereby certify that the foregoing is a true and correct copy of classification of railroads for the purpose of levying privilege tax for the fiscal year 1926-1927, as recorded in Minute Book 9, pages 167 and 168 of the records

of this office, said classification having been made on Monday, August 2, 1926.

Witness my hand and Official Seal of the Mississippi Railroad Commission, on this the 10th. day of October, A. D., 1929.

J. W. Williams, Secretary Miss. Railroad Commission.

[fol. 60] EXHIBIT NO. ONE

I, Ernest Kellner, Secretary-Treasurer and Custodian of the Records, do hereby certify that the Columbus and Greenville Railway Company paid into the Treasury of the Board of Mississippi Levee Commissioners on October 16th, 1926, the sum of $920.50, same being railroad mileage tax for the fiscal year 1925-1926; and

That they paid the sum of $920.50 on October 27th, 1927, same being railroad mileage tax for the fiscal year 1926-1927; and

That they paid the sum of $368.20 on October 31st, 1928, same being railroad mileage tax for the fiscal year 1927-1928. As shown by the records and Cash Journal of the Board of Mississippi Levee Commissioners.

Witness my hand and official seal of this Board this the 14th day of October, 1929.

Ernest Kellner, Secretary and Treasurer and Custodian of the Records.

[fol. 61] EXHIBIT ONE TO Z. P. HAWKINS

STATE OF MISSISSIPPI,
County of Hinds:

I, J. W. Williams, Secretary of the Mississippi Railroad Commissioner, do hereby certify that the "Income balance transferred to Profit and Loss" as shown on pages 301 of the Annual reports of the Columbus & Greenville Railway Company, as filed by said railway company through its proper officers, i. e. A. T. Stovall, President and J. L. Mea-

dows, Auditor for years 1925, 1926 and 1927, is as follows, to-wit:

1925	$85,124.05 Cr.
1926	159,392.98 Cr.
1927	105,145.07 Cr.

Said annual reports being a part of the records of this office of which I am the proper custodian.

Witness my hand and the official Seal of the Mississippi Railroad Commission on this the 15th. day of October, A. D., 1929.

J. W. Williams, Secretary (Seal.)

[fol. 62] In Circuit Court of Montgomery County

[Title omitted]

Agreement re Exhibits.—Filed Nov. 13, 1929

It is agreed by counsel representing appellant and appellee that the original assessment of the State Tax Commission of the Yazoo & Mississippi Valley Railroad Company and of the Columbus & Greenville Railway Company for the years 1926, 1927 and 1928, and also the certified copy of the classification of railroads for the purpose of privilege taxes for the years 1926 and 1927, made by the Railroad Commission, and also the original railroad map of the State of Mississippi, made by the Railroad Commission, all of which were introduced in evidence by appellant, may be sent up to the Supreme Court, in lieu of being copied in the record in this cause, said originals to be used in connection with, and considered a part of, the record on appeal in said cause, free of all objections, except those made in the lower court, as shown by the record.

Witness our hands this the 7th day of November, 1929.

Gardner, Odom & Gardner, Attorneys for Appellant. Franklin, Easterling & Rosenthal, Attorneys for Appellee.

[File endorsement omitted.]

[fol. 63] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 64] Bond on appeal for $25,000, approved November, 1929, omitted in printing.

[fol. 65] Caption, in usual form, showing service on Franklin, Easterling & Rosenthal, filed December 21, 1929, omitted in printing.

[fol. 66] IN SUPREME COURT OF MISSISSIPPI

No. 28555

COLUMBUS & GREENVILLE RAILWAY CO., Appellant,

vs.

W. J. MILLER, State Tax Collector, Appellee

ASSIGNMENT OF ERROR—Filed Dec. 23, 1929

Comes the Columbus & Greenville Railway Company and complains of a judgment rendered against it in the Circuit Court of Montgomery County, Mississippi, in the above entitled cause, and having demanded an appeal to this court, assigns the following error:

(1). The Circuit Court of Montgomery County, Mississippi, committed error in failing and refusing to render a judgment in favor of the appellant.

(2). The Circuit Court of Montgomery County, Mississippi, committed error in rendering a judgment against the appellant.

(3). The Circuit Court of Montgomery County, Mississippi, committed error in rendering the judgment which it rendered.

(4). The Circuit Court of Montgomery County, Mississippi, committed error in holding and adjudicating that

Chapter 259 of the Mississippi Laws of 1926 violated the Fourteenth Amendment to the Constitution of the United States, in that the same deprived appellee and, or the residents of the Levee District of their property without due process of the law and denied to them the equal protection of the law, said Chapter containing the following language:

(That for the purpose of contributing to the expense of building, maintaining and repairing levees in the Mississippi Levee District, and of paying the debts and liabilities incurred thereof, by the board of Mississippi [fol. 67] levee commissioners, the following tax is hereby levied and assessed upon all railroads and parts of railroads lying and situated in the said levee district, to-wit: Upon each and every mile of the main or trunk line of all broad or standard gauge railroads, not including side tracks or switches, the sum of $350.00 per annum; upon each and every mile of narrow gauge railroad or railroads of less width than standard gauge, not including side tracks or switches, the sum of $87.50 per annum; and upon each and every mile of broad or standard gauge railroads, not used and operated as a main or trunk line, but constituting and used as a feeder to or a branch of a main or trunk line, or to connect such main or trunk line with some other system, the sum of $210.00 per annum; provided, that no railroad or branch railroad shall be subject to taxation, under this act while the same is in process of construction, but if any part hereof shall be used for profit, that part so used shall be taxed, although the whole of said railroad or branch may not be finished; provided further that the tax per mile per annum on the main line of any railroad company which does not own in excess of twenty-five miles of railroad in the Mississippi levee district shall be $50.00 per annum."

(5) The Circuit Court of Montgomery County, Mississippi, committed error in holding valid and as non-violative of the Fourteenth Amendment to the Constitution of the United States Chapter 282 of the Mississippi Laws of 1914, said Chapter being in the following language:

"Section 1. Be it enacted by the Legislature of the State of Mississippi that Chapter 125 of the Acts of 1908 be and the same is hereby amended so as to read as follows:

"That Chapter 7 of the Acts of 1886 be and the same is hereby amended so as to read as follows:

"That for the purpose of contributing to the expense [fol. 68] of building, maintaining and repairing levees in the Mississippi Levee District, and of paying the debts and liabilities incurred therefor, by the board of Mississippi Levee Commissioners, the following tax is hereby levied and assessed upon all railroads and parts of railroads lying and situated in the said levee district, to-wit: Upon each and every mile of the main or trunk line of all broad or standard gauge railroads, not including side tracks or switches, the sum of $350.00 per annum; upon each and every mile of narrow gauge railroad or railroads of less width than standard gauge, not including side tracks or switches, the sum of $87.50 per annum; and upon each and every mile of broad or standard gauge railroads, not used and operated as a main or trunk line, but constituting and used as a feeder to a branch of a main or trunk line with some other system, the sum of $210.00 per annum; provided, that no railroad or branch railroad shall be subject to taxation under this act while the same is in process of construction, but if any part thereof shall be used for profit, that part so used shall be taxed, although the whole of said railroad or branch may not be finished.

"Sec. 2. That said taxes shall be paid by the person or corporation owning or operating said railroads to the treasurer of said Mississippi Levee District on or before the first day of November in each year; but upon roads hereafter constructed such tax be payable in one year, only upon so much of said railroads as shall have been used for profit prior to the first day of February in that year.

"Sec. 3. That if said tax is not paid when due, that ten per cent. damages shall accrue thereon, and upon affidavit filed with the circuit court clerk of Washington County, by the treasurer of the board of Mississippi Levee Commissioners, stating the amount of tax due and unpaid and the railroad in default, said Clerk shall issue a writ to the sheriff of Washington County or to the sheriff of such other county in said levee district as may be necessary, [fol. 69] stating in such writ the amount of tax due and

the damages thereon, and directing said sheriff to sell so much of said railroad as may be in his county, in the same manner, at the same place and upon the same notice and terms as is prescribed by law for sale of real estate under execution, for the tax and costs due on said railroad, and said sheriff shall forthwith pay over the amount so collected to the treasurer of said levee board, and shall execute a deed to the purchaser and at once place him in possession of said railroad.

"'Sec. 4. That whenever, under the power conferred by law upon said board of levee commissioners, any reduction is made in their other taxes, then said board shall make a proportional reduction in the taxes assessed by this act for that year, and shall notify the railroad company or other person operating said railroad of such reduction.

"Sec. 5. That this act take effect and be in force from and after its passage.'"

(6) Chapter 282 Mississippi Laws of 1914, as construed by the court in this case, violates the Fourteenth Amendment to the Constitution of the United States, in that the same deprives appellant of its property without due process of law and denies to it the equal protection of the law.

(7) Section 236 of the Constitution of the State of Mississippi, being in the following language:

"Section 236. The legislature shall impose for levee purposes, in addition to the levee taxes heretofore levied or authorized by law, a uniform tax of not less than two nor more than five cents an acre per annum upon every acre of land now or hereafter embraced within the limits of either or both of said levee districts. The taxes so derived shall be paid into the treasury of the levee board of the district in which the land charged with the same is situated; and the legislature, by the act imposing said tax, shall authorize said levee boards to fix the annual rate of taxation per acre within the limits aforesaid, and thereby require said [fol. 70] levee boards, whenever a reduction is made by them in their other taxes, to make a proportionate reduction in the acreage tax hereinbefore mentioned; but said acreage tax shall not be reduced below two cents an acre

per annum; and all reductions in such taxation shall be uniform in each of said districts; but the rate of taxation need not be the same in both of them; and such specific taxes shall be assessed on the same assessment roll, and collected under the same penalties, as the ad valorem taxes for levee purposes, and shall be paid at the same time with the latter. And no levee board shall every be permitted to buy lands when sold for taxes; but the state shall have a prior lien for taxes due thereto. The legislature may provide for the discontinuance of the tax on cotton, but not in such manner as to affect outstanding bonds based on it, and on the discontinuance of the tax on cotton, shall impose another tax in lieu thereof; but the legislature may repeal the acreage tax required to be levied hereby after the first day of January, A. D., 1895", as construed and enforced by the Circuit Court of Montgomery County, Mississippi, in this case, violates the Fourteenth Amendment to the Constitution of the United States, in that the same deprives appellant of its property without due process of law, and denies to it the equal protection of the law.

(8) Section 112 of the Mississippi State Constitution, which is in the following language:

"Section 112. Taxation shall be uniform and equal throughout the state. Property shall be taxed in proportion to its value. The legislature may, however, impose a tax per capita upon such domestic animals as from their nature and habits are destructive of other property. Property shall be assessed for taxes under general laws, and by uniform rules, according to its true value. But the legis- [fol. 71] lature may provide for a special mode of valuation and assessment for railroads, and railroad and other corporate property, or for particular species of property belonging to persons, corporations or associations not wholly situated in one county. But all such property shall be assessed at its true value, and no county shall be denied the right to levy county and special taxes upon such assessment as in other cases of property situated and assessed in the county", as construed and enforced in this case, violates the Fourteenth Amendment to the Constitution of the United States, in that it deprives appellant of its prop-

erty without due process of the law, and denies to it the equal protection of the law.

(9) Other causes to be shown at the hearing.

Gardner, Odom & Gardner, Watkins, Watkins & Eager, Attorneys for the Appellant.

I, William H. Watkins, one of the attorneys for the appellant in the above-entitled cause, have this day mailed to Messrs. Franklin, Easterling & Rosenthal, Attorneys at Law, Jackson, Mississippi, by United States mail, postage prepaid, a true and correct copy of the foregoing assignment of error. This the 21 day of December, 1929.

W. H. Watkins, of Counsel.

[File endorsement omitted.]

[fol. 72] IN SUPREME COURT OF MISSISSIPPI

[Title omitted]

ORDER PERMITTING FILING OF SUPPLEMENTAL ASSIGNMENT ERRORS—Mar. 24, 1930

It is ordered that the appellant be and he is hereby permitted to file, as of February 12th, 1930, its supplemental assignment of errors with the same effect as if filed with the original assignment of errors.

[fol. 73] IN SUPREME COURT OF MISSISSIPPI

[Title omitted]

SUPPLEMENTAL ASSIGNMENT OF ERROR—Filed Feb. 12, 1930

Comes the Columbus & Greenville Railway Company, and, in addition to the errors heretofore assigned to the action of the Circuit Court of Montgomery County, Mississippi, at the trial of the above-entitled cause, upon which errors the appellant relies for the reversal of the

judgment entered against it in the above-entitled cause, assigns the following additional errors:

(1) The Circuit Court of Montgomery County, Mississippi, committed error in admitting, over the objection of the appellant, testimony of R. C. Frazier and L. P. Smith, or either of them, in respect to the publication of Chapter 259, Mississippi Laws of 1926, in a newspaper in Washington County, Mississippi.

(2) The said Circuit Court committed error in excluding the testimony of J. H. Rigby in respect to the condition of the property of the appellant company as compared with that of the Yazoo & Mississippi Valley Railroad Company, and committed error in excluding the testimony of J. H. Rigby in respect to the condition of the physical properties of the appellant company, and committed error in excluding the testimony of J. H. Rigby in respect to the comparative benefits accruing to the Columbus & Greenville Railway Company and the Yazoo & Mississippi Valley Railroad Company by reason of the Levee District, and committed error in excluding the testimony of J. H. Rigby in respect to the lack of advantages and the dissimilarity in the situation and condition of the appellant railway com-
[fol. 74] pany and any other railroad company running at right angles to the Mississippi River, and in excluding the testimony of J. H. Rigby as to the general situation, location and lack of equal advantages accruing to the appellant railway company or any other railroad company entering the Levee District and coming into Greenville, Mississippi, from an easterly direction, as shown Tr. 5-26.

(3) Said circuit court committed error in excluding, at the instance of the appellee, the testimony of Z. P. Hawkins to the same effect as the last above mentioned testimony. Tr. 27-31.

(4) The said Circuit Court committed error in excluding, at the instance of the appellee, the assessment of the State Tax Commission against the Yazoo & Mississippi Valley Railroad Company and the Columbus & Greenville Railway Company for the years 1926, 1927 and 1928.

(5) The said Circuit Court committed error in excluding, at the instance of the appellee, testimony consisting of

the classification of railroads for the purpose of levying privilege taxes for the years 1926 and 1927 and Railroad Commission Map of Mississippi.

(6) Other causes to be shown at the hearing.

Gardner, Odom & Gardner, Watkins, Watkins & Eager, Attorneys for the Appellant.

I, William H. Watkins, one of the solicitors for the appellant in the above entitled cause, certify that I have this day served copy of the foregoing supplemental assignment of error on the appellee by mailing a copy thereof, postage prepaid, to Messrs Franklin, Easterling & Rosenthal, Attorneys at Law, Jackson, Mississippi.

This the 12th day of February, 1930.

W. H. Watkins, of Counsel.

[File endorsement omitted.]

[fol. 75] Minute entry of argument and submission March 25, 1930, omitted in printing.

[fol. 76] IN SUPREME COURT OF MISSISSIPPI

No. 28555

COLUMBUS & GREENVILLE RAILWAY COMPANY

vs.

W. J. MILLER, State Tax Collector for the Use and Benefit of the Mississippi Levee District

JUDGMENT—April 21, 1930

This cause having been submitted on a former day of this term on the record herein from the Circuit Court of Montgomery County and this court having sufficiently examined and considered the same and being of opinion that there is no error therein, doth order and adjudge that the judgment of said Circuit Court rendered in this cause at the October Term, 1929, on October 17th, 1929, be and the

same is hereby affirmed and that the appellee do have and recover of and from appellant and of A. F. Gardner and A. T. Stovall, sureties in the appeal bond the sum of Twelve Thousand, One Hundred and Fifty and 60/100 Dollars with interest on said sum at 6 per centum per annum from July 31st 1928 to October 17th, 1929, amounting to the sum of Sixteen Hundred and Twelve and 01/100 Dollars, making a total of Thirteen Thousand, Seven Hundred and Sixty Two and 61/100 Dollars together with the further sum of Six Hundred and Eighty Eight and 13/100 Dollars, being damages at the rate of 5 per centum as allowed by law as well as interest on the amount of said judgment from date of rendition in the court below until paid at the rate of 6 per centum per annum and also the costs of this cause in this court and in the court below, to be taxed, etc.

[fol. 76½] IN SUPREME COURT OF MISSISSIPPI, DIVISION A

28555

COLUMBUS & GREENVILLE RAILROAD CO.

vs.

W. J. MILLER, State Tax Collector

OPINION—Filed April 2, 1930

SMITH, C. J.:

This case is ruled by the opinion rendered on the former appeal herein (154 Miss. 317, 122 So. 366), to which we adhere; and the evidence excluded, if competent, as to which we express no opinion, could not have changed the result.

Affirmed.

[File endorsement omitted.]

[fol. 77] Valuation Docket No. 191

SOUTHERN RAILWAY COMPANY IN MISSISSIPPI.

Submitted June 20, 1923. Decided July 11, 1924.

Extract from said Pamphlet as Requested by Appellant.

1. Protest of the Southern Railway Company in Mississippi against the tentative valuation of its property considered and determined.

2. Final value of the property of the Southern Railway Company in Mississippi, owned and used for common-carrier purposes, as of June 30, 1915, found to be $4,470,534, and used but not owned $194,511.

C. O. Amonette for Southern Railway Company in Mississippi.

Ralph H. Kimball for Western Union Telegraph Company.

REPORT OF COMMISSION

Division 1, Commissioners McChord, Meyer, Aitchison, and Lewis.

By DIVISION 1:

A tentative valuation, as of June 30, 1915, of the property of the Southern Railway Company in Mississippi, hereinafter called the carrier, was completed and notice thereof, dated January 21, 1922, was given to the carrier and other interested parties. The carrier filed a protest within the statutory period. A protest was filed by the Southern Railway Company against the valuation of equipment owned by it and leased to the carrier. On January 12, 1923, the Western Union Telegraph Company filed a petition that it be made a party to the proceedings. A hearing has been had on the issues presented by the protest of the carrier and briefs have been filed. No testimony was presented by the Southern Railway Company in support of its protest.

On June 30, 1915, the date of the valuation, the carrier owned and operated a line of railroad extending from the

Mississippi-Alabama State line, near Columbus, Miss., to Greenville, Miss., a distance of 179.093 miles. Branches from the main line aggregated 58.353 miles. The carrier also owned 59.508 miles of yard tracks and sidings. All of the railroad had been acquired by purchase. A detailed description of the property of the carrier is given in the order entered herein.

[fol. 78] The protest of the carrier is directed generally against the rules, methods, and principles employed in the preparation of the tentative valuation. Most of the general objections set out in the protest were considered and disposed of in Texas Midland Railroad, 75 I. C. C. 1; Winston-Salem Southbound Railway Co., Id. 187, and Kansas City Southern Railway Co., Id. 223.

The carrier alleged in its protest that the sum of $4,470,534, which we found to be the value of the property wholly owned and used by it, is improperly determined and less than the true value of its properties on date of valuation, which it claims should be $6,948,549. This latter sum is composed of $5,676,039, the carrier's estimate of the cost of reproduction new; $563,322 the present value of lands as reported by us; $616,268, the excess cost of acquisition of land reported by us; and $92,920, the carrier's claim for material and supplies. The carrier claims that if the elements of appreciation, development, organization for operation, and deferred maintenance or depreciation are considered, the value of the properties at date of valuation will be not less than the amount stated above as its claim, although the value claimed is actually built up by adding together the cost of reproduction new without deduction for depreciation, the present value and excess cost of acquisition of carrier lands, and material and supplies.

The report of original and present cost of condemnation and damages or of purchase of lands in excess of such original cost or present value contained in the tentative valuation report will be eliminated from this report, since the valuation act has been so amended as no longer to require this information.

[fol. 79] IN SUPREME COURT OF MISSISSIPPI

No. 28,555

[Title omitted]

PETITION FOR APPEAL—Filed May 23, 1930

To the Honorable Sydney Smith, Chief Justice of the Supreme Court of the State of Mississippi and the presiding judge thereof:

Your petitioners, The Columbus & Greenville Railway Company, a corporation organized and existing under the laws of the State of Mississippi, defendant in the Court below, in the Circuit Court of Montgomery County, Mississippi, and appellant in this Court in the above entitled cause, and A. T. Stovall and A. F. Gardner, sureties on its appeal bond to the Supreme Court of the State of Mississippi in the above entitled cause, in this their petition for an appeal from the final judgment rendered against petitioners by the Supreme Court of the State of Mississippi to the Supreme Court of the United States, respectfully show unto the Court that on the seventeenth day of October, 1929, a judgment was rendered in the above entitled cause in the Circuit Court of Montgomery County, Mississippi, against the petitioner, the Columbus & Greenville Railway Company, in favor of the appellee, W. J. Miller, State Tax Collector, for the use of the Mississippi Levee District, in the sum of thirteen thousand, seven hundred and sixty-two and sixty-one one-hundredths dollars ($13,762.61) with costs of court and interest at the rate of six per centum per annum from the above mentioned date. The petitioner, Columbus & Greenville Railway Company, prosecuted an [fol. 80] appeal from said judgment, rendered in the Circuit Court of Montgomery County, Mississippi, as aforesaid, to the Supreme Court of the State of Mississippi and petitioners, A. T. Stovall and A. F. Gardner, became sureties on it's said appeal bond; and upon the twenty-first day of April, 1930, the judgment rendered by the Circuit Court of Montgomery County, Mississippi, against the Columbus & Greenville Railway Company, as aforesaid, was affirmed and final judgment was rendered upon said date against the Columbus & Greenville Railway Company, and A. T.

Stovall and A. F. Gardner, surety for said judgment with interest, cost and damages; that said judgment rendered by the Supreme Court of the State of Mississippi against the petitioners is now a final judgment of the Supreme Court of the State of Mississippi; and that the said Supreme Court of the State of Mississippi is the highest Court in said State in which a decision in said cause may be rendered; that the Supreme Court of the State of Mississippi, is the highest court of appellate jurisdiction in the State of Mississippi.

Petitioners show unto the Court that in said suit there was brought in question Chapter 282, Mississippi Laws of 1914, as being in conflict with and in violation of Paragraph 1 of the 14th Amendment to the Constitution of the United States in that the Columbus & Greenville Railway Company, appellants, claimed, alleged and asserted that said Chapter 282, Mississippi Laws of 1914, as enforced and construed in this case, violated said Paragraph 1 of the 14th Amendment to the Constitution of the United States in that said statute deprived the said Columbus & Greenville Railway Company, Petitioner, of its property without due process of law and denied to it the equal protection of the law, the said Chapter 282, Mississippi Laws of 1914, being in words and figures as follows, to-wit:

"An act to Amend Chapter 125 of the Acts of 1908, Entitled 'An Act to Amend Chapter 7 of the Acts of 1886, En-
[fol. 81] titled an Act to Provide for the Payment of Levee Taxes by Railroads in the Mississippi Levee District of the State, Approved March 5, 1908.

Mississippi Levee District; Railroad Taxes; Act 1908 Amended

Section 1. Be it enacted by the Legislature of the State of Mississippi, that chapter one hundred and twenty-five of the acts of 1908 be and the same is hereby amended so as to read as follows:

That chapter 7 of the acts of 1886 be and the same is hereby amended so as to read as follows:

That the purpose of contributing to the expense of building, maintaining and repairing levees in the Mis-

sissippi levee district, and of paying the debts and liabilities incurred therefor, by the board of Mississippi levee commissioners, the following tax is hereby levied and assessed upon all railroads and parts of railroads lying and situated in the said levee district, to-wit: Upon each and every mile of the main or trunk line of all broad or standard gauge railroads, not including side tracks or switches, the sum of $350.00 per annum; upon each and every mile of narrow gauge railroad or railroads of less width than standard gauge not including side tracks or switches, the sum of $87.50 per annum; and upon each and every mile of broad or standard gauge railroads, not used and operated as a main or trunk line, but constituting and used as a feeder to a branch of a main or trunk line, or to connect such main or trunk line with some other system, the sum of $210.00 per annum; provided, that no railroad or branch railroad shall be subject to taxation under this act while the same is in process of construction, but if any part thereof shall be used for profit, that part so used shall be taxed, although the whole of said railroad or branch may not be finished.

"Taxes to be Paid Over by Railroad to Treasurer of Levee Board

Sec. 2. That said taxes shall be paid by the person or corporation owning or operating said railroads to the [fol. 82] treasurer of said Mississippi levee district on or before the first day of November in each year; but upon roads hereafter constructed such tax by payable in one year only upon so much of said railroads as shall have been used for profit prior to the first day of February in that year.

"If Taxes Not Paid When Due, Ten per Cent Damages to Accrue

Sec. 3. That if said tax is not paid when due then ten per cent damages shall accrue thereon, and upon affidavit filed with the circuit court clerk of Washington county by the treasurer of the board of Mississippi levee commissioners stating the amount of tax due and unpaid and the railroad in default said clerk shall issue a writ to the sheriff

of Washington county of the sheriff of such other county in said levee district as may be necessary, stating in such writ the amount of tax due of and the damages thereon, and directing said sheriff to sell so much of said railroad as may be in his county, in the same manner, at the same place, and upon the same notice and terms as is prescribed by law for sale of real estate under execution, for the tax and costs due on said railroad, and said sheriff shall forthwith pay over the amount so collected to the treasurer of said levee board, and shall execute a deed to the purchaser and at once place him in possession of said railroad.

"When Board Reduces Other Taxes, Proportionate Reduction to be Made in These Taxes

Sec. 4. That whenever, under the power conferred by law upon said board of levee commissioners, any reduction is made in their other taxes, then said board shall make a proportional reduction in the taxes assessed by this act for that year, and shall notify the railroad company or other person operating said railroad of such reduction.

Sec. 5. That this act take effect and be in force from and after its passage.

Approved February 28, 1914."

[fol. 83] The decision of the said Supreme Court of the State of Mississippi, in its said judgment, heretofore referred to, entered upon the twenty-first day of April, 1930, was in favor of the validity of the said statute of the State of Mississippi, here-in-before referred to; and the Supreme Court of the State of Mississippi, by its said judgment, applied and enforced the statute against the petitioners, in said final judgment, over the claim and assertion of petitioners that said law of the State of Mississippi, as construed and applied, violated Paragraph 1 of the 14th Amendment to the Constitution of the United States, as here-in-before set out.

Your petitioners show unto the Court that in the rendition of said final judgment against said petitioners certain errors were committed to the prejudice of your petitioners, all of which in detail appear in the assignment of errors here-with filed in this cause.

Wherefore your petitioners, feeling aggrieved by the final decision and judgment of the Supreme Court of the State of Mississippi, here-in-before set forth, pray for the allowance and appeal from the judgment of the Supreme Court of the State of Mississippi, with supersedeas as now allowed by law for the correction therein of the errors complained of; and your petitioners present herewith an assignment of errors, to be presented in argument in the Supreme Court of the United States and plaintiffs in error tender herewith their formal and duly executed bond, with good and sufficient sureties joining in the execution of said bond, said bond being conditioned according to law.

Your petitioners pray the approval of said bond and that a transcript of the pleas and proceedings therein, duly authenticated, may be forthwith, in accordance with law, sent to the Supreme Court of the United States. Notice hereof has been duly served upon the attorneys of record for the appellee herein. As in duty bound, your petitioners will ever pray.

[fol. 84] This the 23rd day of May, 1930.

W. H. Wilkinson, A. F. Gardner, Sr., Attorneys for Petitioner, Columbus & Greenville Railway Company, and A. T. Stovall and A. F. Gardner.

Notice of the foregoing petition for appeal acknowledged and service waived, this the 23rd day of May, 1930.

Franklin, Easterling & Rosenthal, Attorneys for Appellee.

[File endorsement omitted.]

[fol. 85] In Supreme Court of Mississippi

[Title omitted]

Order Allowing Appeal and Approving Bond—Filed May 23, 1930

The above entitled matter, coming on for hearing, upon the petition of The Columbus & Greenville Railway Company, A. T. Stovall and A. F. Gardner, petitioners, for an

appeal from the final judgment of the Supreme Court of the State of Mississippi in the above entitled cause and upon examination of the said petition and the record in said matter and desiring to give the petitioners opportunity to present in the Supreme Court of the United States the questions presented by the record in the said matter, therefore it is ordered that an appeal with supersedeas from the judgment of the Supreme Court of the State of Mississippi be and is hereby allowed petitioners, as allowed by law, and that the appeal bond presented by the said petitioners, for fifteen thousand dollars ($15,000.00), be and the same is hereby approved.

This the 23rd day of May, 1930.

Sydney Smith, Chief Justice of the Supreme Court of the State of Mississippi.

O. K. Franklin, Esterling & Rosenthal, Attorneys for Appellee.

[File endorsement omitted.]

[fols. 86-90] Bond on appeal for $15,000, approved and filed May 23, 1930, omitted in printing.

[fol. 91] Citation, in usual form, showing service on Franklin, Easterling & Rosenthal, filed May 23, 1930, omitted in printing.

[fol. 92] In Supreme Court of Mississippi

[Title omitted]

Assignment of Error—Filed May 23, 1930

Plaintiffs in error, Columbus & Greenville Railway (Railroad) Company, a corporation chartered and organized under the laws of the State of Mississippi, and A. T. Stovall and A. F. Gardner, Sr., sureties upon its appeal bond to the State of Mississippi, would show unto the court in this assignment of error that there was manifest error prejudicial

to them apparent of record in the proceedings, decision and final judgment in the Supreme Court of the State of Mississippi in the above-entitled cause in this, to-wit:

(1) The Supreme Court of the State of Mississippi committed error in affirming the judgment of the Circuit Court of Montgomery County, Mississippi, appealed from, and in rendering final judgment against plaintiffs in error upon the 21st day of April, 1930, in the above entitled cause.

(2) The Supreme Court of the State of Mississippi committed error in affirming against the plaintiffs in error, Columbus & Greenville Railway (Railroad) Company, and A. T. Stovall and A. F. Gardner, Sr., its sureties, the judgment rendered against the Columbus & Greenville Railway (Railroad) Company in the Circuit Court of Montgomery County, October Term, 1929.

(3) The Supreme Court of the State of Mississippi committed error in failing and refusing to render a judgment reversing the judgment rendered against the Columbus & Greenville Railway (Railroad) Company in the Circuit Court of Montgomery County, Mississippi, appealed from, and in failing and refusing to render a judgment in the Supreme Court of the State of Mississippi in favor of the said Columbus & Greenville Railway (Railroad) Company and dismissing said suit.

(4) The Supreme Court of the State of Mississippi committed error in holding that Chapter 282 of the Mississippi [fol. 93] Laws of 1914 was valid over and against the objections of the Columbus & Greenville Railway (Railroad) Company that said Chapter 282, Mississippi Laws of 1914, as applied and enforced in this case, violated the Fourteenth Amendment to the Constitution of the United States, in that the same deprived the said Columbus & Greenville Railway (Railroad) Company of its property without due process of law and denied to it the equal protection of the law.

(5) The Supreme Court of the State of Mississippi committed error in holding that Chapter 259, Mississippi Laws of 1926, violated the Fourteenth Amendment to the Constitution of the United States, and that the classification

of railroads for purposes of levee taxation was arbitrary and unreasonable.

(6) The Supreme Court of the State of Mississippi committed error in holding that Chapter 259, Mississippi Laws of 1926, was not a valid and enforcible statute as applied to the Fourteenth Amendment of the Constitution of the United States and Paragraph 1 thereof, and that the same did not constitute a complete defense on the part of the said plaintiff in error to said action.

(7) The Supreme Court of the State of Mississippi committed error in excluding the testimony of the witness J. H. Rigby offered in the Circuit Court of Montgomery County, Mississippi, by plaintiff in error, wherein the plaintiff in error sought to prove the relative condition of the Columbus & Greenville Railway (Railroad) Company as compared with the Yazoo & Mississippi Valley Railroad Company; that is to say, the roadbed of the Yazoo & Mississippi Valley Railroad Company is six feet higher, four feet wider, has heavier rails, modern equipment and modern buildings; the Yazoo & Mississippi Valley Railroad receives vastly increased benefit from the construction of the levee than the Columbus & Greenville Railway (Railroad) Company, by reason of the mileage, buildings, equipment, volume of business, &c.; that the Columbus & Greenville Railway (Railroad) Company would only be protected by levee north of Greenville; that the current does the damage; the Yazoo & Mississippi Valley Railroad Company's engines handle four times as many cars as the Columbus & Greenville Railway (Railroad) Company; the physical condition of the Yazoo & Mississippi Valley Railroad Company's equipment is much higher; that all the equipment of the Columbus & Greenville Rail- [fol. 94] way (Railroad) is old and secondhand, facilities exceedingly limited, old and out of date; bridges on the Columbus & Greenville Railway (Railroad) light, not in good condition, not possible to use heavy engines on trains.

(8) The Supreme Court of the State of Mississippi committed error in affirming the action of the Circuit Court of Montgomery County, Mississippi, in excluding the evidence of C. P. Hawkins, showing the very great dissimil-

arity in the construction and operation of the Yazoo & Mississippi Valley Railroad as compared with the Columbus & Greenville Railway (Railroad), as well as the very great difference in the property and equipment of said two railroad companies.

(9) The Supreme Court of the State of Mississippi committed error in affirming the action of the Circuit Court of Montgomery County, Mississippi, in excluding the assessment for ad valorem taxes made by the Mississippi State Tax Commission against the Columbus & Greenville Railway (Railroad) Company for 1926, 1927 and 1928.

(10) The Supreme Court of the State of Mississippi committed error in affirming the action of the Circuit Court of Montgomery County, Mississippi, in excluding certified copy of classification of railroads for the purpose of levying privilege taxes made by the Mississippi State Railroad Commission for the years 1926 and 1927.

(11) The Supreme Court of the State of Mississippi committed error in holding that the appellee, W. J. Miller, State Tax-Collector, for the use of the Mississippi Levee District, had the right to assert that Chapter 259, Mississippi Laws of 1926, violated the Fourteenth Amendment to the Consitution of the United States.

(12) For other reasons apparent.

W. H. Watkins, A. F. Gardner, Sr., Attorneys for Plaintiffs in Error.

[fol. 94½] [File endorsement omitted.]

[fols. 95-125] In Supreme Court of Mississippi

[Title omitted]

Præcipe for Transcript of the Record—Filed May 23, 1930

The Clerk of the Supreme Court of the State of Mississippi in preparing and transmitting the record in the above-entitled cause to the Supreme Court of the United States, will include in the record the following:

(1) Declaration.
(2) Defendant's pleas and notice.
(3) Complete record of the testimony with all exhibits thereto.
(4) Final Judgment Circuit Court.
(5) Assignment of error in the Supreme Court of Mississippi.
(6) Suppmenental assignment of error.
(7) Judgment permitting supplemental assignment of error.
(8) Judgment of affirmance.
(9) Opinion of the Supreme Court of the State of Mississippi.

W. H. Watkins, A. J. Gardner, Sr., Attorneys for Appellants.

Service of the foregoing præcipe acknowledged.
This 23rd day of May, 1930.

Franklin, Easterling & Rosenthal, Attorneys for Appellee.

[fol. 126] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 127] IN SUPREME COURT OF THE UNITED STATES

STATEMENT OF POINTS RELIED UPON BY THE APPELLANTS AND STIPULATION OF PORTIONS OF THE RECORD TO BE PRINTED—Filed June 10, 1930

The Columbus & Greenville Railway Company, A. T. Stovall and A. F. Gardner, Sr., appellants in the above-entitled cause, in order to secure a reversal of the judgment appealed from, will rely upon the following points:

(1) Chapter 259, Mississippi Laws of 1926, provides a proper classification of railroads for taxation, and does not violate the Fourteenth Amendment to the Constitution of the United States, but is a valid enactment, and under the

terms thereof, appellants are entitled to be relieved of further liability.

(2) Chapter 259, Mississippi Laws of 1926, provides a proper and reasonable basis of classification of railroads for taxation in the Levee District, and does not violate the Fourteenth Amendment to the Constitution of the United States.

(3) The Supreme Court of the State of Mississippi held that Chapter 259, Mississippi Laws of 1926, violated the Fourteenth Amendment to the Constitution of the United States, thereby denying to the petitioners the immunity from liability for further payment of levee taxes which it asserted under said act, whereby the appellants were deprived of their property without due process of law and denied the equal protection of the law.

(4) In denying to the petitioners their claim of immunity from further liability for taxes under Chapter 259, Mississippi Laws of 1926, and in enforcing against them Chapter 282, Mississippi Laws of 1914, petitioners were deprived of their property without due process of law and denied the equal protection of the law.

(5) Under the Fourteenth Amendment to the Constitution of the United States, by virtue of the provisions of Chapter 259, Mississippi Laws of 1926, petitioners were [fol. 128] immune from further liability for taxes to the Levee District, for which judgment was rendered against them by the Supreme Court of the State of Mississippi.

(6) Chapter 282, Mississippi Laws of 1914, as construed and applied against appellants in this case, violates the Fourteenth Amendment to the Constitution of the United States, in that the same deprives the appellants of their property without due process of law and denies to them the equal protection of the law.

(7) The proof offered by the appellants established a vast difference in the location, situation, physical properties, earning power and proportionate exposure to damage from floods of the Mississippi River and benefits to accrue from the construction and maintenance of levees as com-

pared with the Yazoo & Mississippi Valley Railroad Company, the only other standard gauge railroad in the District.

(8) There were but two railroad companies in the District, the Columbus & Greenville Railway Company and the Yazoo & Mississippi Valley Railroad Company. The many facts of dissimilarity justified the classification made by the Legislature of the State of Mississippi, Chapter 259, Mississippi Laws of 1926.

(9) The Legislature of the State of Mississippi, in the absence of proof to the contrary, is presumed to have ascertained and found sufficient facts to justify the classification made in Chapter 259, Mississippi Laws of 1926.

(10) The classification of a railroad company according to a mileage basis is one of the most consistent methods therefor.

(11) Appellee is not entitled to avail himself of the Fourteenth Amendment to the Constitution of the United States. He has no personal interest in the controversy, and the Mississippi Levee District is not a person within the meaning of the Fourteenth Amendment.

(12) Other points to be presented at the hearing.

(13) Designation of portions of record to be printed.

The Clerk of this Court will print the entire record in the above-entitled cause transmitted from the Supreme Court of the State of Mississippi.

[fol. 129] Wm. H. Wilkins, Attorneys for Appellants.

Service acknowledged by copy.
This 7th day of June, 1930.
L. T. Easterling, Franklin, Easterling & Rosenthal,
Attorneys for Appellee.

[fol. 130] [File endorsement omitted.]

[fol. 131] IN SUPREME COURT OF THE UNITED STATES

AGREEMENT OF COUNSEL TO DISPENSE WITH PRINTING CERTAIN PORTIONS OF THE RECORD

In order to prevent the printing of certified copies of the assessment rolls of the Mississippi State Tax Commission forming part of the record in this case, it is agreed that for the years 1926, 1927 and 1928, the Mississippi State Tax Commission assessed for ad valorem taxes the railroad of the Columbus & Greenville Railway Company in the Levee District at one thousand dollars ($1000.00) per mile; that the railroad of the Yazoo & Mississippi Valley Railroad Company was assessed for ad valorem taxes in the Mississippi Levee District at thirty-two thousand dollars, ($32,000.00) per mile; that at the trial of this cause in the Circuit Court of Montgomery County, Mississippi, the plaintiff objected to the introduction of said assessment rolls as incompetent, immaterial and irrelevant; that such testimony was excluded by the court and the action of the Circuit Court of Montgomery County, Mississippi, was affirmed by the Supreme Court of the State of Mississippi in the judgment appealed from, and that such assessment roll be not printed with the record.

Wm. H. Wilkins, Attorneys for Petitioner. Franklin, Easterling & Rosenthal, by Simon Rosenthal, Attorneys for Respondent.

Endorsed on cover: File No. 35,117. Mississippi Supreme Court. Term No. 195. Columbus & Greenville Railway Company et al., Appellants, vs. W. J. Miller, State Tax-Collector, for the use of the Mississippi Levee District. Filed June 10, 1930. File No. 35,117.

SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed October 20, 1930

The petition herein for a writ of certiorari to the Supreme Court of the State of Mississippi is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.